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**The Grand Illusion?**

**Corporate Social Responsibility  
in Global Garment Production Networks**

vorgelegt von

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# Abbreviations

AVE	Aussenhandelsvereinigung des Deutschen Einzelhandels e.V.
BCI	Bangladesh Chamber of Industries
BGMEA	Bangladesh Garment Manufacturers and Exporters Association
BI	Business Initiative
BKMEA	Bangladesh Knitwear Manufacturers and Exporters Association
BMZ	Bundesministerium für wirtschaftliche Entwicklung und Zusammenarbeit
BSCI	Business Social Compliance Initiative
CAP	Corrective Action Plan
CBA	Collective Bargaining Agreement
CCC	Clean Clothes Campaign
CSO	Civil Society Organization
CoC	Codes of Conduct
CoE	Committee of Experts
CR	Corporate Responsibility
CSR	Corporate Social Responsibility
EC	European Commission
ECCHR	European Center for Constitutional and Human Rights
EPZ	Economic Processing Zones
ETI	Ethical Trading Initiative
EvB	Erklärung von Bern
FLA	Fair Labelling Organization
FNV	Federatie Nederlandse Vakbeweging
FoA	Freedom of Association
FOB	Free on Board
FSC	Forest Stewardship Council
FTA	Foreign Trade Association
FWF	Fair Wear Foundation
GCC	Global Commodity Chains
GVC	Global Value Chains
GPN	Global Production Network
GTZ	Gesellschaft für Technische Zusammenarbeit
ILO	International Labour Organization
ISCOM	International Social Compliance Verification
LbL	Labour behind the Label
LW	Living Wages
MFA	Multi Fibre Agreement
MWB	Minimum Wage Board
MSA	Management System Audit



MSI	Multi-Stakeholder Initiative
MSR	Management System Requirements
MW	Minimum Wages
NGO	Non-Governmental Organization
OECD	Organisation for Economic Co-operation and Development
PIC	Partners in Change
PSI	Private Standards Initiative
RMG	Ready Made Garments
SAAS	Social Accountability Accreditation Services
SAI	Social Accountability International
TDS	The Daily Star
TEA	Tirupur Exports Association
TK	Taka (Bangladesh Currency)
TPF	Tirupur Peoples' Forum
TSG	Tirupur Steering group
TU	Trade Unions
UN	United Nations
UNCTC	UN Centre on Transnational Corporations
WO	Workers' Organizations
WRAP	Worldwide Responsibility Accredited Production
WRC	Worker Rights Consortium
WTO	World Trade Organization

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# Summary

This PhD aims to generate a better understanding of corporate social responsibility (CSR) in global production networks. CSR is an umbrella term that deals with voluntary activities undertaken by companies and that indicate an ethos to act responsibly in society. This research focuses on CSR practices that aim towards improving working conditions in outsourced production factories by implementing so-called social standards, which often derive from core norms of the International Labour Organization and intend to secure decent working conditions. While companies claim that they take responsibility for workers via CSR practices, civil society actors like the Clean Clothes Campaign criticize CSR as public relations exercise as companies still fail to take 'sufficient' responsibility. Based on this contradiction this PhD aims to reveal the political contestation surrounding CSR and the struggles over CSR between companies and civil society organizations claiming to represent workers in global production networks. The main questions are: What practices do companies use to take responsibility for workers in outsourced production, how do they legitimize these practices, and how are these approaches contested?

The research is based on theoretical concepts of 'shared responsibility', 'political CSR' and 'democratic legitimacy'. The 'global production network' framework and a framework for analysing private regulation, referring to legislative, judicial, and executive regulation, are applied.

Empirically, the research analyses two private standards initiatives that define and institutionalize CSR practices, namely the Fair Wear Foundation (FWF) and the Business Social Compliance Initiative (BSCI). The findings are mainly based on 150 qualitative interviews with representatives from companies, civil society, auditing companies, and governments. Additionally, documents are evaluated. Empirical research was undertaken in Europe (mainly Germany & Switzerland) and Asia (India & Bangladesh).

The research findings suggest that the CSR practices defined by BSCI and the FWF are based on rather different interpretations of the causes of worker injustice. The BSCI is based on a belief in a concept of liberal democracy. In this view companies do not need to legitimate their activities, as long as they comply with national laws. Responsibility is based on a liability model that blames producers and national governments for neglecting their responsibility towards workers. Companies joining the BSCI take the responsibility of initiating processes in developing countries that demand governments, producers and civil society actors in these countries to take responsibility. In contrast, the approach of the FWF is based on an understanding of 'structural injustice' and 'shared responsibility'. In this view violations of labour rights are identified to be inherent in the complexities of global production networks themselves. No single actor can be blamed for the injustices, and therefore corporations 'share' a responsibility, and must engage in public discourses according to their power and abilities, what is seen as a 'political' form of CSR.

# Zusammenfassung

Diese Doktorarbeit verfolgt das Ziel, ein besseres Verständnis von 'Corporate Social Responsibility' (CSR) in globalen Produktionsnetzwerken zu entwickeln. Dabei geht es primär darum zu verstehen, welche Verantwortung Unternehmen in Europa für die Verbesserung der Arbeitsbedingungen in Zulieferbetrieben vor allem in Niedriglohnländern haben. Es besteht ein Dilemma auf diskursiver Ebene, zwischen den Vorstellungen von Unternehmen und zivilgesellschaftlichen Organisationen über die Verantwortung von Unternehmen. Die Arbeit untersucht folgenden Fragen: Was tun Unternehmen, um ihrer sozialen Verantwortung gerecht zu werden, wie rechtfertigen sie ihre CSR Praktiken, und wie werden diese kritisiert?

Theoretisch basiert die Arbeit auf demokratie- und diskursorientierten Konzepten wie 'geteilter Verantwortung', 'politischer CSR' und 'demokratischer Legitimität'. Es wird ein Analyserahmen entwickelt, der das Konzept der 'Globalen Produktionsnetzwerke' mit einem Konzept zur Untersuchung freiwilliger Regulierung verbindet.

Empirisch vergleicht die Arbeit zwei private Standardinitiativen miteinander, die Business Social Compliance Initiative (BSCI) und die Fair Wear Foundation (FWF). Ferner spielt die Perspektive zivilgesellschaftlicher Gruppen eine Rolle, wie vor allem der Clean Clothes Campaign. Die empirische Analyse basiert auf 150 qualitativen Interviews, die in Europa (v.a. Deutschland, Schweiz), Indien und Bangladesh durchgeführt wurden, sowie der Auswertung von Dokumenten.

Die Ergebnisse zeigen, dass die Praktiken der BSCI und der FWF auf unterschiedlichen Annahmen von Verantwortung und auf unterschiedlichen Vorstellungen über die Ursachen von Arbeitsrechtsverletzungen basieren. Die BSCI geht von einem Haftungsmodell von Verantwortung aus. Danach sind primär Nationalstaaten verantwortlich für die Schaffung guter Arbeitsbedingungen im eigenen Land. Produzenten in einem Land können dann jeweils für Verstöße gegen die Gesetze haftbar gemacht werden. Als zentrale Ursache für die schlechten Arbeitsstandards werden die fehlenden Fähigkeiten der Fabrikmanager gesehen, und entsprechend sind die CSR Praktiken ausgerichtet. Die Argumentation der FWF kann dem Modell der 'geteilten Verantwortung' zugewiesen werden. Danach kann niemand individuell für Arbeitsverletzungen haftbar gemacht werden, sondern alle über globale Produktionsnetzwerke verbundenen Akteure teilen eine Verantwortung dafür, eine Lösung für die Probleme zu suchen. Als zentrale Ursachen für die niedrigen Arbeitsstandards werden neben fehlenden Managementfähigkeiten auch die Forderungen der Markenfirmen gesehen, und die CSR-Praktiken richten sich danach.

# 1 Introduction

*The most we can confidently say about corporate social responsibilities' impact (in developing countries) at the present time is that it benefits some people and some companies in some situations. (Blowfield & Frynas 2005:507)*

Prior to April 2010, the German company *Lidl* advertised on its website that it promotes fair working conditions worldwide. It claimed to take responsibility for good working conditions in its supply chains and to strongly contribute to sustainably improving them, particularly in developing countries<sup>1</sup>. Part of this claim was to refer to the membership in the *Business Social Compliance Initiative* (BSCI). These activities then help justify the trust that customers place in the company<sup>2</sup>.

On April the 8<sup>th</sup> 2010, the *Verbraucherzentrale Hamburg*, the *Clean Clothes Campaign* (CCC) Germany and the *European Center for Constitutional and Human Rights* filed a lawsuit against the discounter (Berg 2010). They charge that *Lidl*'s advertising is 'unfair competition' as it deceives and misleads its customers. The CCC argues that *Lidl* uses its BSCI membership for 'social washing' (Burckhardt 2010). According to the CCC, the company refers to its membership in the business initiative in a way that suggests an 'obligation' to implement social standards, while in reality the BSCI only follows the 'aim' of doing so. The CCC presents evidence for working conditions in factories in Bangladesh supplying *Lidl* being considerably worse than promised by the company.<sup>3</sup> All major newspapers in Germany, Austria and Switzerland and the German TV reported on this case and many of the headlines connected *Lidl* to fraud or deceiving customers, exploitation etc.<sup>4</sup>

The *Lidl* case is only one example of the general phenomenon of companies claiming to take responsibility for fair working conditions in their outsourced production, while NGOs criticize them for not taking responsibility. This research aims at a better empirical and theoretical understanding of corporate social responsibility (CSR) practices in global garment production networks (GPN)<sup>5</sup>. It shall help to evaluate whether or not CSR practices like those of *Lidl* are today's 'grand illusion' trying to deceive customers.<sup>6</sup>

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<sup>1</sup> "Als BSCI-Mitglied setzt sich Lidl für sozialverträgliche Produktionsbedingungen ein. Auf diese Weise leistet Lidl einen grossen Beitrag zur nachhaltigen Verbesserung der Arbeitsbedingungen in der weltweiten Lieferkette, vor allem in Entwicklungs- und Schwellenländern" (Klage der Verbraucherzentrale Hamburg e.V. gegen Lidl Dienstleistungs GmbH & Co KG, 6.4.2010), [www.vzh.de](http://www.vzh.de), 10.4.2010

<sup>2</sup> "Als Unternehmen ist es grundsätzlich unser Bestreben, die sozialen und ökologischen Belange in Einklang zu bringen, um das in uns gesetzte Vertrauen zu rechtfertigen.", [www.lidl.de](http://www.lidl.de), 12.4.2010

<sup>3</sup> [http://www.vzh.de/~upload/vz/VZTexte/TexteRecht/Lidl\\_Klage.pdf](http://www.vzh.de/~upload/vz/VZTexte/TexteRecht/Lidl_Klage.pdf) (22.4.2010) [http://www.saubere-kleidung.de/downloads/2010-04-08\\_Studie\\_Klage-gegen-Lidl.pdf](http://www.saubere-kleidung.de/downloads/2010-04-08_Studie_Klage-gegen-Lidl.pdf) (22.4.2010)

<sup>4</sup> Deutschlandfunk 8.4.2010: Verbraucherzentrale verklagt Lidl wegen Etikettenschwindel bei Textilien; Spiegel 8.4.2010: Discounter in der Kritik: Experten werfen Lidl Aussitzen vor; FAZ 8.4.2010: Täuschungsvorwurf. Verbraucherzentrale Hamburg klagt gegen Lidl; FR 8.4.2010: Faire 80 Stunden Arbeit pro Woche; FTD 8.4.2010: Arbeitsbedingungen im Ausland. Verbraucherschützer verklagen Lidl; SZ 8.4.2010: Das verkaufte Gewissen; SWR "Betrifft" zu Lidl in Bangladesch, 28.10.2010

<sup>5</sup> Here, 'global production networks' refers to the complex system of global production (→ CH 4). I use (global) 'supply chains', in contrast, when referring to the production chain more from a company perspective.

<sup>6</sup> 'The Grand Illusion' is a movie directed by Jean Renoir in 1937 with which he wanted to show the futility of war.

## 1.1 Global garment production, ethical campaigning & corporate responsibility

Most clothes are produced in low-income countries where labour regulation lacks to effectively protect workers' rights. In a competitive environment producers try to lower their production costs in order to attract buyers, often by reducing labour costs. This has been criticized to lead to a race to the bottom with regards to working conditions (Klein 2000; Hale & Shaw 2001; Wills & Hale 2005). Some claim that economic globalization has led to the *retreat of the state*, where governments are either unable or unwilling to ensure that working conditions in factories do not violate national or international labour standards (Strange 1996). As global competition is also not regulated with mandatory international rules that would sanction all market players, workers are not protected against exploitation.

In the context of the *retreat of the state*, civil society organizations and global social movements were established with the aim of supporting factory workers in their struggles for better working conditions (Cohen & Rai 2000; Sluiter 2009). They initiated a public discourse on corporate responsibility and workers' rights, criticizing global brands and retailers in Europe and the US for not 'adequately' taking responsibility for workers in their supply chains. The CCC, a leading non-governmental organization (NGO)<sup>7</sup> in the area of worker rights, asserts that "millions of women employed in factories and workshops" are paying for the profits of discounters like *Lidl*, *Aldi* and *Walmart* (Hearson 2009). Social movements connect different groups with similar priorities and aims, inform the public and mobilize consumers to articulate their protests through ethical campaigns. They show ethics of care not only for the national sphere, but also for distant relationships articulated through global supply chains (Barnett & Land 2007; Hughes, Wrigley et al. 2008:349f). Such campaigns are said to shape everyday practices of consumption, as consumers take into consideration the companies' ethical reputations in their own purchasing practices. NGOs, ethical campaigns and social movements define for the meaning of companies to take 'adequate' responsibility for their workers and suggest where 'responsible' consumers should and should not shop. By shaping ethical preferences they exert normative power over corporations and state agencies (Clarke, Barnett et al. 2007a:241; Hughes, Wrigley et al. 2008:351).

Partly as a reaction to NGOs and their ethical campaigns companies voluntarily engage in voluntary CSR practices, such as adapting and implementing social standards in their supply chains (Gereffi, Garcia-Johnson et al. 2001). Many have joined a so-called voluntary private standards initiative (PSI) that aims at harmonizing CSR efforts of individual companies and thus making private regulation more efficient, and maybe more effective and credible (Vogel 2009:9). PSIs usually define social or environmental codes of conduct and the measures that participating companies take in order to implement these codes in their supply chains. There are two different types of private standards initiatives: In so-called business initiatives (e.g. *Common Code for the Coffee Industry Initiative*, *Responsible Care Initiative*, *Business Social Compliance Initiative*) companies

<sup>7</sup> I usually refer to the CCC as NGO; however, as the NGO is a large network that connects more than 200 organizations, I sometimes also refer to it as 'social movement'.

alone decide on the rules applied, while in multi-stakeholder initiatives (MSI) (e.g. the *Forest Stewardship Council*, the *Ethical Trading Initiative* or the *Fair Wear Foundation*) diverse stakeholders share decision-making power (O'Rourke 2006; Vogel 2009).

## 1.2 Research problem, aim and questions

The number of voluntary regulation initiatives has proliferated in the last 20 years. Today many different initiatives to improve working conditions co-exist in almost every industry sector and they are competing for new members (Vogel 2009:4). Each single initiative claims that the participating companies take the utmost responsibility for improving working conditions in their supply chains (Featherstone 2004; O'Rourke 2006). Many regard private regulation initiatives and the connected CSR practices as an effective and credible way of closing public regulation gaps in developing countries and of reducing the adverse effects of economic globalization for workers in developing countries (United Nations 2007).

However, as the *Lidl* example illustrates, some voluntary efforts to implement social standards into global supply chains are strongly criticized<sup>8</sup>. Researchers question the effectiveness of voluntary regulation, particularly on the intended beneficiaries, i.e. workers in developing countries: “The most we can confidently say about CSR’s impact (in developing countries) at the present time is that it benefits some people and some companies in some situations” (Blowfield & Frynas 2005:507)<sup>9</sup>. A few empirical studies show that the impacts of the much-praised multi-stakeholder initiatives (MSI) are also very low (Locke, Qin et al. 2006; Barrientos & Smith 2007). Other articles criticize that the impact on the poor and poorest in developing countries is not known, low, or can even be negative (Bendell & Murphy 2002; Dhanarajan 2005; Jenkins 2005; Nelson, Adrienne et al. 2005; Utting 2005b; Prieto-Carrón, Lund-Thomsen et al. 2006; Blowfield 2007; Newell & Frynas 2007; Nadvi 2008). It is further criticized that private regulation does not touch the root causes of poor working conditions in global production networks, namely power relations in the global economy (Prieto-Carrón, Lund-Thomsen et al. 2006; Fuchs 2007). On the contrary, by reproducing the (power) structures that cause the main problems in global supply chains, voluntary regulation may even make it more difficult to solve problems in the long run.

Other studies argue that PSIs are not credible or legitimate. The credibility of voluntary regulation is criticized because consumers or other groups cannot easily test whether, for instance, a piece of garment was produced in compliance with the social standards as companies assert. Whereas consumers can test product quality themselves, they have to trust those saying that the working conditions are ‘good’. The *Lidl* case illustrates that this can become difficult. This is all the more challenging as companies have been criticized for engaging in corporate responsibility activities as a public relations tool in

<sup>8</sup> Much of the critique refers to voluntary corporate responsibility practices in general and not to specific private regulation initiatives.

<sup>9</sup> CSR initiatives “fail to address difficult questions about treatment of suppliers and workers’ rights or about community reinvestment and obligations to invest over the long term or to provide job security. The range of development issues they address, while important, is limited.” (Newell & Frynas 2007:679)

order to improve their reputation (Christian Aid 2004; Blowfield & Murray 2008): “CSR emerged among leading firms and business schools as a public relations tool, a way to deflect criticism, engage critics and potentially capitalise on emerging business opportunities associated with doing, and being seen to be doing, good” (Newell & Frynas 2007:670). Furthermore, political scientists argue that private regulation often lacks the democratic legitimacy that is required to decide upon matters of regulation, and management scholars similarly criticize that common CSR practices do not provide the companies with moral legitimacy (Palazzo & Scherer 2006; Scherer & Palazzo 2007; Palazzo & Scherer 2008; Scherer & Palazzo 2008). This critique is particularly problematic in cases where private regulation replaces public regulation like in the case of regulation of social standards (Dingwerth 2005; Pattberg 2005; Utting 2005b; Dingwerth 2007; Fuchs & Kalfagianni 2007; Nölke & Granz 2007).

Is CSR in supply chains the ‘grand illusion’ created by companies and their consultants to deceive the consumers and the public – and at the same time to prevent the states from fixing mandatory rules? I argue that there is no simple answer to this question because of the great variety of CSR and private regulation initiatives. This research takes the perspective that CSR and private regulation practices are politically contested by many different actors in global production networks (Levy & Kaplan 2007; Levy 2008). Each actor is embedded into a different local and socio-economic context and has his own interpretation of corporate responsibility.

**My research aims to understand how CSR is politically contested in global production networks.** My research questions are:

- How do brands and retailers define their responsibility for good working conditions in their supply chains, what practices do they use to implement their approaches, and which arguments do they present to legitimize their approach?
- How do other actors in global production networks criticize or even try to delegitimize CSR approaches and what arguments do they use?

I specify the questions for the empirical research in chapter 4. With this rather descriptive analysis of arguments regarding corporate responsibility in global production networks, I aim to provide a better empirical knowledge of different practices and understandings of corporate responsibility in global garment production networks. This is important, because there are many very different approaches, and all claim to promote good working conditions. The research reflects that corporate responsibility is no single truth. From the analysis of arguments, I derive some more theoretical proposals regarding the limitations of voluntary corporate responsibility, and how practices can be evaluated.

### 1.3 Empirical research: Data and methods

The empirical research presented here focuses on one specific sector, the garment industry. This sector is particularly interesting because protests about poor working standards have been ongoing for the past 20 years. Partly due to the strong protests in this sector, private standards initiatives and corporate responsibility practices are further developed than in most other industry sectors. Most corporations therefore have



developed strategies and arguments, and other sectors could learn from a detailed analysis of this sector. Empirically, the study focuses on two case studies, i.e. two private standards initiatives: (1) the *Business for Social Compliance Initiative* (BSCI) set up by companies in 2003, is a business-initiative; (2) the *Fair Wear Foundation* (FWF), by contrast, is a multi-stakeholder initiative that was launched by the CCC and set up in cooperation with industry groups and funded by the government in the Netherlands in 2004.

The two initiatives were selected because they both follow the aim, to improve working conditions in factories supplying European companies, but with two very different approaches. They differ strongly in how their credibility and legitimacy are perceived and evaluated. The CCC has been criticizing the BSCI for not being credible and effective, and recommends that companies become member of the FWF. In contrast, institutions such as the *Commission of the EU*, The *Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung*<sup>10</sup> (BMZ) and the *Gesellschaft für Technische Zusammenarbeit*<sup>11</sup> (GTZ) have been supporting the BSCI. Companies in Europe can actually choose between becoming member of the BSCI or of the FWF, but only few choose the path recommended by ethical campaigns. So far, in Germany more than 150 companies have become members of the BSCI, whereas only two are members of the FWF.

The work empirically also focuses on the *Clean Clothes Campaign*, which is a global social movement. In 2009 it was made up of more than 200 labour rights organizations worldwide (Sluiter 2009). This network demands that brands and retailers selling clothes in European countries take responsibility for improving working conditions in the factories producing the garments they sell, and that they be accountable for negative labour practices in global supply chains. Today it has become one of the most influential global social movements, framing the meaning of ‘adequate’ regulation and corporate responsibility and therefore pushing European garment brands and retailers to improve working conditions in their global supply chains.

My analysis is based on a combination of methods. More than 150 qualitative interviews were conducted with BSCI and FWF members, other companies and NGOs in Germany and Switzerland, and with suppliers, auditors, consultants, NGOs and international donors in India and Bangladesh. The two South Asian countries are two of the most important Asian garment producing countries for Europe. In addition to the interviews, main documents of the BSCI, the FWF, corporate responsibility reports and various documents of the CCC were analysed in order to identify the arguments given by different groups (→ see chapter 5 for more details).

## 1.4 Organization of the book

I develop my argument as follows: Chapter 2 explains the complexities of global supply chains, how brands and retailers outsource garment production and how theory has

<sup>10</sup> German Federal Ministry for Economic Cooperation and Development

<sup>11</sup> German Technical Cooperation Organization

conceptualized the power relationships between brands/retailers and their suppliers. It illustrates how the corporate practices are embedded in global institutional contexts of trade liberalisation, competition and the fashion industry, which requires flexibility in the whole industry. It also shows how companies are confronted with the power of ethical campaigns that are calling for better working conditions and threatening to ruin the reputation of brands if these do not react by engaging in corporate responsibility practices. The chapter concludes with presenting Young's theoretical approach to conceptualize 'structural injustice' in global value chains leading to poor working conditions, and how in this situation responsibility can be defined and dissolved by collective action.

Chapter 3 focuses on the corporate responsibility practices of brands and retailers and presents different concepts of corporate responsibility. One focuses on business cases, whereas the alternative one regards companies as 'political actors', who should engage in public discussions to behave responsibly. Chapter 3.2 presents practices used to implement social standards into global supply chains, and how they are criticized. Chapter 3.3 points out effectiveness, credibility and legitimacy of standard implementation as key challenges for empirical research on corporate social responsibility in global production networks.

Chapter 4 presents two analytical frameworks that are used to analyse the empirical data. The framework presented in chapter 4.1 is used to break down the complex CSR practices of implementing social standards into three parts and to organize the empirical research accordingly: legislative regulation (setting rules), judicial regulation (auditing standards), executive regulation (implementing standards). Chapter 4.2 presents the *global production network* framework. This framework allows viewing global trade relationships as complex structures in which actors are not only horizontally connected in chains, but also vertically in networks. It moves beyond a simple analysis of the governance structure of value chains and offers some conceptual categories for analysing relationships in the GPN, but also the power of different actors, their embeddedness into different places and networks, and the concept of value.

Chapter 5 presents the empirical research method I applied, the data I used and how I evaluated the data. Chapters 6-10 present the empirical results.

Chapter 6 briefly introduces the CCC and the focal areas of the German and Swiss network. The arguments of the CCC are mainly presented in chapters 8-10.

Chapter 7 presents and compares the approaches (i.e. the rules) used in the two case studies – the two private standards initiatives BSCI and the FWF. It looks at how they define corporate responsibility and what rules they define for their members to put their responsibility into practice, i.e., how the members must implement social standards into their supply chains.

Chapters 8-10 present and discuss the struggles regarding legislative, judicial, and executive regulation and the arguments used in these struggles. Chapter 8 examines arguments regarding legislative regulation. Chapter 8.1 discusses how different actors think that rules for global business must be set and who must participate in the setting. Legislative regulation mainly deals with the (democratic) legitimacy of a voluntary

regulation approach. Chapter 8.2 then examines the struggles about minimum and living wages in Bangladesh, which is one of the central issues to the often poorly paid garment workers. These struggles illustrate well the arguments referring to the efficiency of voluntary regulation approaches.

Chapter 9 examines arguments regarding judicial regulation (mainly social auditing). Auditing is very much connected with the credibility and the legitimacy of a voluntary approach. Main struggles concern issues like the independence of auditors (→ CH 9.1) and the quality of audits, i.e., whether social audits can identify worker problems inside factories (→ CH 9.2). It discusses the inclusion of stakeholders (→ CH 9.3) and the efficiency of auditing (→ CH 9.4)

Chapter 10 then discusses arguments regarding the executive regulation of standards. This chapter mostly deals with the question, how the implementation of standards can be made effective. It discusses purchasing practices and structural limitations that these set (→ CH 10.1), improvements of management skills (→ CH 10.2), and how stakeholders see that workers can best be empowered to raise their voices (→ CH 10.3).

Finally, chapter 11 sums up and discusses the core findings regarding the main questions.

## 2 Global garment production, anti-sweatshop campaigns and corporate responsibility

In the 20<sup>th</sup> century the labour-intensive production of garments was outsourced from Europe and the US to developing countries, where wages were lower (Esbenshade 2004; Dicken 2007a). Protesting against the poor working conditions in outsourced garment production, a so-called ‘anti-sweatshop movement’<sup>12</sup> became active in the 1990s in the US and in Europe. Since then labour rights and solidarity groups have drawn the public awareness to the poor ‘sweatshop’-like working conditions in developing countries and have connected these conditions with large brands and retailers in the US and Europe (Hale 2000; Klein 2000; Hale & Shaw 2001; Rosen 2002; Esbenshade 2004; Arnold & Bowie 2007). The movement has been blaming large brands for causing poor working conditions, arguing that large brands have the power and responsibility to improve the workers’ situation in their supply chains. The companies initially denied any responsibility for workers in factories far away, arguing that they did not cause the injustice. Rather the owners and managers of the factories in developing countries were to blame, because they deliberately minimized costs that lead to breaking national labour laws (Young 2004:367f). Later, however, many brands implemented voluntary corporate responsibility practices, as shown in chapter 3.

With regard to my research aim, this chapter introduces the difficulties of ascribing responsibility in complex globalized production. Chapter 2.1 briefly deals with the globalized production of clothes<sup>13</sup>. It explains how the relationship between a company in Europe that is designing and marketing garments and the producers in a developing country is conceptualized. Chapter 2.2 shows power relationships between the buyers and the suppliers, and chapter 2.3 presents how the anti-sweatshop movement builds up counter-power against large companies and presses them to improve working conditions. In chapter 2.4, I present Iris Young’s theoretical perspective of ‘political’ or ‘shared’ responsibility. I argue that it can help ascribe responsibilities in the complex context of global garment production.

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<sup>12</sup> Sweatshop: Workplace in which workers are employed at low wages and under unhealthy or oppressive conditions. In [England](#), the word *sweater* was used as early as 1850 to describe an employer who exacted monotonous work for very low wages. “Sweating” became widespread in the 1880s, when immigrants from eastern and southern Europe provided an influx of cheap labour in the [United States](#) and central Europe. An increase in industrialization in the 20th century saw sweatshops emerge in parts of [Latin America](#) and [Asia](#), a trend that accelerated with increased demand for [consumer goods](#) in the West and a lowering of ... [Encyclopædia Britannica](#). 2010. Encyclopædia Britannica Online. 15 Mar. 2010 <http://www.britannica.com/EBchecked/topic/576470/sweatshop>.

<sup>13</sup> In this chapter I use the term ‘supply chain’ because I focus on the economic interactions, and the chain concept helps focussing on these. Later I introduce the framework ‘global production network’ as an analytical concept. I use the terms garments, clothes, apparel synonymously.

## 2.1 Global garment production

Most garments for the European market are imported from Asia and Eastern Europe (→ Figure 1), where labour costs are relatively low (→ Figure 2). In these countries the garment industry attracts start-up entrepreneurs, because it is little capital intensive. Labour is almost all an entrepreneur needs to invest in (Dicken & Hassler 2000).

Largest textiles-importers to EU25 (2005)	
China	22.903
Turkey	11.157
India	5.591
Romania	4.068
Bangladesh	3.715
Tunisia	2.697
Morocco	2.398
Pakistan	2.256
Hong Kong	1.819
Switzerland	1.506
<b>Sum</b>	<b>58.110</b>

Figure 1: Imports of textiles in Mio Euro 2005 including garments, fabrics, fibres (Source: Eurostat 2005)

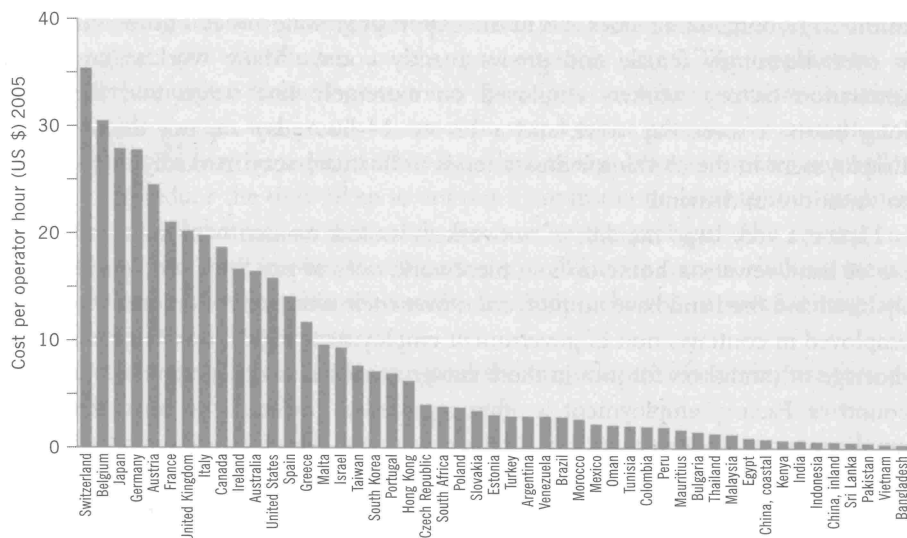


Figure 2: Hourly labour costs in the textile and clothing industry 2005 (Source: Dicken 2007:257 – taken from Werner International)

The production chain of garments can roughly be divided into four parts: (1) the brand or retailer that designs and markets a product and sources the production according to the own design. This company is called the **‘lead firm’** and is usually situated in a developed country. The lead firm sells products directly or indirectly to the customers.

The three main production processes are usually outsourced to developing countries: (2) garment production, (3) textile production, and (4) fibre production (→ Figure 3). Each of these processes is embedded into a local context. The value addition in the design and marketing processes is usually much higher than in the other three production processes. My research focuses on the interaction between (1) and (2), i.e., the lead firm and the garment production. In the latter working conditions are said to be poor and the core labour rights of the *International Labour Organization* (ILO) are often violated. The

voluntary social standards initiatives that I empirically analyse apply in the garment production.<sup>14</sup>

Relevant to the implementation of social standards is the distinction between a direct and an indirect connection between the lead firm (1) and the factory that is mainly producing the garments (2). In the **indirect connection**, an agent (an importer or exporter) supplies the products to the lead firm. These agents often have offices in the market region (i.e. Europe or US) and in production countries. They take an order and then deal with the complete supply chain management according to their buyers' demands. In the **direct connection**, a lead firm's supplier is the garment factory that produces the clothes. The difference is relevant, because in a direct connection the buyer and the garment producer sign a contract, and the lead firm has a better control over producer.

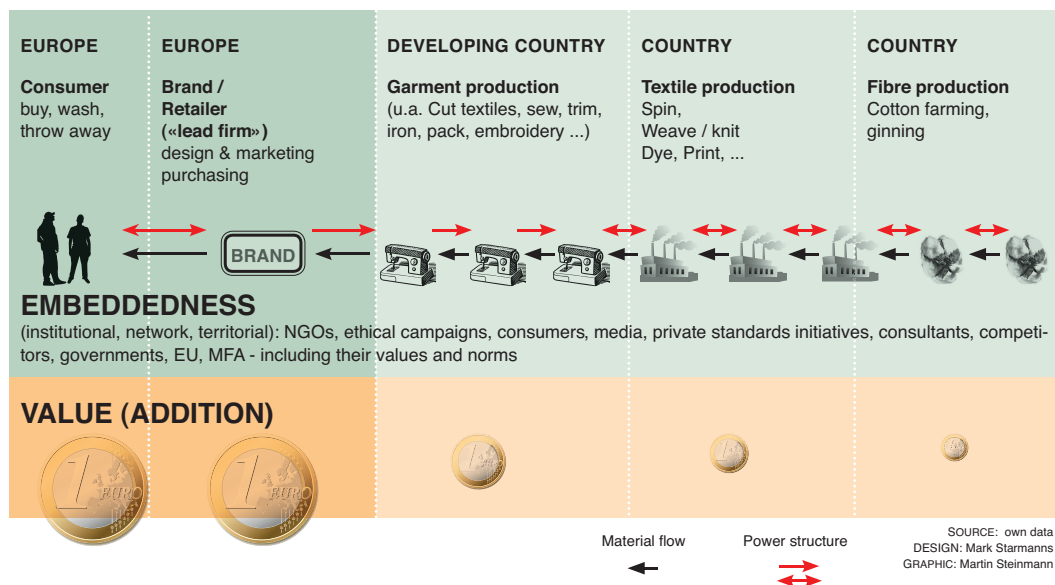


Figure 3: The garment supply chain

The production of the clothes usually does not happen in only one factory. A garment supplier can either only focus on the garment production, or be **vertically integrated** and hence controlling garment and textile production. A garment producer may carry out all production processes that are needed to finish a piece of garment<sup>15</sup>. Sewing the cloth is usually the most labour intensive one. But the producer can also **subcontract** single production processes. Gereffi et al. (2005) suggest that the way production networks are organized depends to a large degree on the **transaction costs** it takes to control the suppliers. The variety of how garment supply chains are organized is therefore very diverse and usually differs for each single product and order (→ Figure 5 provides a rough idea of the complexity of the H&M chains) (also see for instance: Gereffi & Korzeniewicz 1994; Korzeniewicz 1994; Gereffi & Memedovic 2003; Hassler 2003; Hassler 2004; Neidik & Gereffi 2006).

<sup>14</sup> There are certainly also labour rights violations in the textiles and fibre production, but they are not analysed here.

<sup>15</sup> The “production” of a piece of garment usually takes the textile as an input and then includes more than 10 single steps. It is usually referred to cut-make-trim. Further processes are ironing, packing, embroidery, printing and the like.

Sourcing is complex, as one brand does not only have one supply chain. Rather, many products of one brand have their own story, i.e., their own supply chain. The single production processes for one garment piece often take place in different factories in various cities and countries. The example of one Patagonia product (→ compare Figure 4: Kamala scoop top) indicates how the story of one product can be told. The product is designed in the Patagonia headquarters in California. The cotton fibre comes from Turkey and the Tencel® fibre from Austria. The fibres are spun and then sewed in Thailand (for a more detailed examination of the travels of a T-shirt, see: Rivoli 2006). However, broken down into single production steps, already more than 10 or 20 workers are involved in the production of such a simple product.



Figure 4: Screenshot of the 'footprint chronicles' of two different products, [www.patagonia.com](http://www.patagonia.com), 31.3.2010

Usually the lead firm and its supplier (producer or agent) sign a buying contract, in which they fix the conditions for production and delivery of one or several products. These contracts usually fix (a) what product the supplier shall produce in what quality (b) the quantity of the product, (c) when the product needs to be delivered, and (d) what social and environmental standards need to be considered (→ CH 2.2). The lead firm and its supplier agree on the price for a single order on this basis.

Most lead firms have various direct suppliers. They might change suppliers from one order to the next or keep them for many years. Basically, a lead firm interacts with many different direct suppliers and these suppliers have many different supply chains behind them, which are often unknown to the lead firm. How many supply chains a company needs to manage depends on the diversity of its products, the company's philosophy and other factors. Large brands like Disney have more than 30.000 direct suppliers, a brand like H&M manages about 800 direct suppliers with approximately 2.700 production units, and small brands with less than a \$10 million turnover might have less than 20 direct suppliers (Young 2006; H&M 2008).



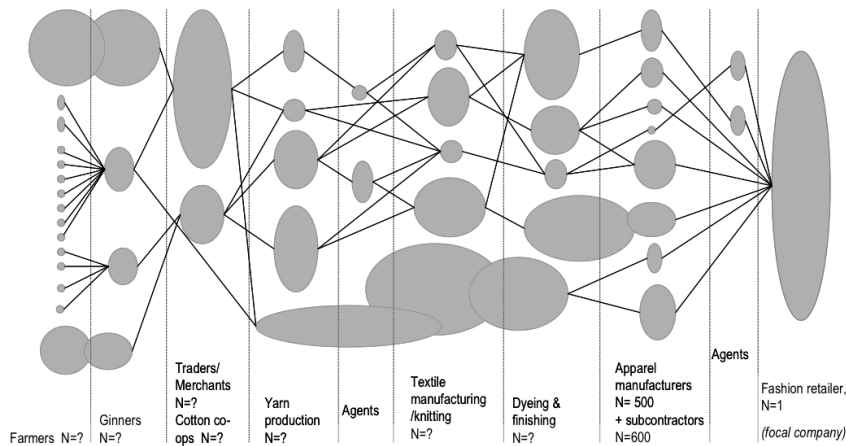


Figure 5: A rough picture of what the supply chains for H&M may look like (Kogg 2009)

Garment supply chains are influenced by various factors, such as the societal context of the lead firm, the fashion system, and the global regulatory framework (Hassler 2003). Between 1974 and 2005 the **multi-fibre agreement** (MFA) regulated the global trade in garments and allowed countries to negotiate textile and clothing quotas bilaterally for every product. Its principal aim was to “create ‘orderly’ development of trade in textiles and clothing that would benefit *both* developed and developing countries” (Dicken 2007a:261). However, de facto, after four rounds of renegotiation, it helped to protect the garment industry in the US and EU with tight quota from competitors from developing countries and greatly restricted the rate of growth of exports in developing countries (Dicken 2007a:261). But the system also “provided many developing countries a way to establish a garment industry that had been a source of economic growth and foreign earnings, created jobs and reduced poverty to a certain extent”<sup>16</sup>. Some industries in developing countries were mere constructs of the MFA and regarded as uncompetitive without the quota system, particularly against China (Dicken 2007a:261).

With the end of the MFA, countries like Bangladesh that depended on the export of ready-made garments feared that the increased competition would have serious negative consequences both economically and socially (World Bank 2006). In India, the MFA phase-out caused similar concern among some suppliers who felt they would find it hard to compete with China once the quota was abolished. Overall, there was a strong fear that the garment industry would shift once more to China, as the quota system of the MFA strongly supported the industry in some smaller countries like Bangladesh.

The full effects of the MFA-phase out are not identified yet. Wick (2009) argues that worldwide prices have dropped as a consequence:

*With the end of the ATC and sharper international competition, export prices for textile and clothing products began to drop in 2005. The reasons for this were the end of the quota price and the cheap producers’ penetration of the liberalised world market, to which multinational importers then received unimpeded access. (Wick 2009:9)*

Whether a region can produce in a cost-effective way depends on many factors, such as the industry strategies, corporate strategies, and on how the national or local governments

<sup>16</sup> <http://www.mfa-forum.net/aboutMFAForum.aspx>, 3.3.2010



would react to the liberalization. It also depends on the consumers, if a cost-effective production is the highest priority in sourcing or whether the highest priority of some brands might also be connected to social or environmental aspects of production.

## 2.2 The power of brands and retailers in global supply chains

The anti-sweatshop movement argues that brands and retailers have the power to implement social standards, which can be conceptualized theoretically with the **global commodity chains** (GCC) framework (Dicken, Kelly et al. 2001:97). Gereffi (1994) defines the GCC as follows:

*A GCC consists of sets of interorganizational networks clustered around one commodity or product, linking households, enterprises, and states to one another within the world-economy. These networks are situationally specific, socially constructed, and locally integrated, underscoring the social embeddedness of economic organization. ... Specific processes or segments within a commodity chain can be represented as boxes or nodes, linked together in networks (Gereffi 1994:2)*

The GCC framework is used by researchers whose analysis focuses on the larger structural power relationships in global economic trade that support or limit the implementation of social standards (Gereffi 1994; Fichter & Sydow 2002; Gibbon & Ponte 2005; Gibbon, Bair et al. 2008; Bair 2009)<sup>17</sup>. Many see the power of brands and retailers as part of the structural background within which lead firms force their suppliers to implement standards (Kaplinsky & Morris 2001; Humphrey 2005; Smith & Barrientos 2005:193,197). The central concept in the GCC framework is the governance structure of the chain. It conceptualizes how firms organize their cross-border production arrangements and is defined as:

*Power relationships between firms that determine how financial, material, and human resources are allocated and flow within a chain. (Gereffi 1994:97; Sturgeon 2009:114).*

Garment chains are called '**buyer-driven**'. Buyer-drivenness indicates that lead firms, who design and market the goods, have a great deal of power in the whole supply chain (Gibbon & Ponte 2005; Dicken 2007b; Gibbon, Bair et al. 2008:321; Sturgeon 2009:123). The lead firm is seen as playing the central role in setting up and coordinating decentralized production networks and as having the power to control the activities of other firms in the chain that it does not own (Gereffi, Humphrey et al. 2001:4; Coe, Dicken et al. 2008a:277). The GCC framework thus draws attention to the asymmetrical power relationships between buyers and suppliers. Scholars and practitioners have been using the GCC framework to stress that lead agents hold power in global supply chains and even use 'aggressive models' of retailer-led supply chain management – particularly transnational retailers based in Europe and North America such as Walmart, Tesco, Metro (Crewe 2000; Hale 2000; Dolan & Humphrey 2004; Gibbon & Ponte 2005; Wrigley, Coe et al. 2005; Hughes 2006a:638; Hughes, Buttle et al. 2007:493).

Power is seen as resulting from the significance of design and marketing activities in global apparel production, the dependence of suppliers, and the asymmetries in value addition within the chain (see also Bair 2005; Gereffi, Humphrey et al. 2005:82). Hughes

<sup>17</sup> While Gary Gereffi developed the GCC framework into the global value chains (GVC) framework, many still claim that the new framework is not so useful for analysing power relations in global trade, and therefore stick with the GCC framework (Gibbon & Ponte 2005; Gibbon, Bair et al. 2008; Bair 2009). I follow this view.

et al. (2007:494) demonstrate that retailers can dictate pricing and payment terms to their suppliers and make strict demands on producers in terms of product specifications and delivery times. Accordingly, Fitter & Kaplinsky (2001:78f) define chain governance as “power to define who does and who does not participate in the chain, the setting of rules of inclusion, assisting chain participants to achieve these standards and monitoring their performance” – i.e., buyers have the power to prescribe social standards, because lead firms have the power to exclude producers (compare Humphrey & Schmitz 2001:22). However, developmental scholars criticize the sanctioning of suppliers that do not implement social standards because such sanctions lead to an exclusion of suppliers from markets and prevent them from developing (Nadvi 2008).

Sturgeon (2009:129) notes that lead agents can and do use their purchasing power to limit supplier power. As lead firms keep switching suppliers, they thus exert power over suppliers who want to gain future orders:

*Although it is not always exercised, purchasing power allows a lead firm to explicitly coordinate the activities of its supply chain and to pressure suppliers to lower costs, increase quality, adopt specific equipment, employ specific business processes, purchase inputs from specific vendors, and invest in specific locations ... (Sturgeon 2009:129).*

Humphrey defines the lead firms’ power as the ability to determine the following four questions (Humphrey & Schmitz 2001:21f; Humphrey 2005:22):

- What is to be produced?
- How is it to be produced?
- When is it to be produced?
- How much is to be produced?

He furthermore argues that many buyers can also determine the product price. While the implementation of social standards mainly deals with the question “How is it to be produced?” the discussion above suggests that the other production dimensions also influence the success of implementing standards. Basically, the other dimensions act as structural enabling or disabling conditions for implementing social standards. Research shows that they can worsen working conditions for overseas labourers, who already experience low wages, and restrict rights in the workplace (Hughes 2005:1148).

How far down the chain does the power of lead agents reach? Gibbon & Ponte (2005) argue that different forms of chain co-ordination (market, network, hierarchy) may govern a supply chain, but that each single governance form can be limited to a segment of the chain. For instance, the form of co-ordination between the cotton farmers and the spinning mills might be market-related when cotton is sold and bought on the open market, whereas the relationship between the lead agent and the garment factory might happen in a network type. In contrast, the mode of chain governance that refers to the whole chain would still be buyer-driven in most cases (Hughes 2006a:639). For instance, the overall mode of governance is buyer-driven, as the lead agent determines what cotton quality the garment factory must use; and by doing this, the lead agent indirectly sets quality standards for the cotton and textile production.

Various studies point out that the five dimensions of the lead agents’ purchasing practices are in contradiction with each other and can undermine the implementation of

social standards that the buyers want to promote (Hughes 1999; Hughes 2000; Hughes 2004; Mamic 2004; Reimer & Leslie 2004; Hughes 2005; Raworth & Kidder 2009:166). Therefore some argue that changing purchasing practices as part of companies' CSR policies could make a significant difference (Dhanarajan 2005). If suppliers do not manage to cope with the situation, it is suggested, they pass the pressure on to the workers:

*Brands and retailers are demanding faster, more flexible, and cheaper production from internationally outsourced suppliers ... these are not geared up to deliver because they lack the managerial and technical tools needed to cope with the demands of lean production, and they have little power to negotiate with the buyer. As a result, suppliers transfer the pressures onto workers, who bear it in the form of precarious employment ... (Raworth & Kidder 2009:165).*

Hence, Raworth and Kidder (2009:166) argue that lead firms could not create low-cost and flexible supply chains, if workers would not accept poor working conditions: "the success of retailers and brands in creating low-cost flexible supply chains appears to rely on the availability of a pool of workers who are socially and economically obliged to accept work on such terms" (Raworth & Kidder 2009:165). Raworth (2009:174) derives three different kinds of pressure that buyers exert on suppliers:

- Time and speed, such as pressures to deliver faster, reduce production lead times, and shorten design cycles – this is particularly problematic in the quick fashion industry, where companies like Zara have 12 seasons a year, which leads to shorter lead times.
- Flexibility and seasonality, such as demands for quick changes in order size and the ability to switch rapidly between product designs.
- Costs and risks, such as demands for higher quality at lower prices – suppliers in some studies complain that prices went down by 35% within 1,5 years, whereby quality demands concerning standards rather went up.

Some of these pressures (time/speed/flexibility/seasonality) are seen as determined by the **fashion system**. Sally Weller (2003) termed fashion business as 'time competition'. In her view the fashion system is "formed in the mysterious depths of social processes that are external to firms and beyond their scope of influence" (Weller 2003:147). Fashion garments that capture consumer interests are characterized by rapid growth and high market penetration. If the consumers' mood changes 'fashion garments' marketability declines more rapidly than more 'standardized' (basic) goods. One of the central factors in fashion is the unpredictability of consumer behaviour (Weller 2003:146). This again means that while lead firms hold power over their suppliers, they themselves are situated in an insecure and unpredictable situation.

Table 1 sums up the different forms of lead firms' power presented here.

**Table 1: The power of lead firms**

Source of power	Power to do what?
<ul style="list-style-type: none"> <li>• Value addition is asymmetrical: Design and marketing is more significant than sewing</li> <li>• Suppliers depend on demands (too many suppliers)</li> <li>• Suppliers want to win future orders</li> </ul>	<ul style="list-style-type: none"> <li>• Control the activities of firms it does not own</li> <li>• Determine product and production specification</li> <li>• Determine payment/pricing terms</li> <li>• Determine lead times</li> </ul>

- 
- |   |   |
|---|---|
| • Buyers are free to switch suppliers                           | • Determine standards (quality, social, environmental)                |
| • Many workers have little choice but to accept poor conditions | • Determine inputs used   |
|   | • Determine, who participate / exclude producers (sanction suppliers) |
|   | • Audit producers   |

### 2.3 Civil society counter-power: Ethical campaigns against sweatshops

The concentration of market power in the hands of lead firms is seen as the main reason why civil society organizations started pushing retailers and brands in Europe or the US to assure responsibility for their supply chains in the 1990s, for instance by introducing ethical trading programs (Wrigley, Coe et al. 2005; Hughes, Wrigley et al. 2008). Ethical campaigns like the anti-sweatshop movement are seen as a counter-power to corporations in a globalized economy that influence the way corporations are perceived by the public (Hughes, Wrigley et al. 2008).

The anti-sweatshop movement exerts pressure on brands and retailers by connecting working conditions in outsourced production with the companies in Europe and the US, and by making them public (Gereffi, Garcia-Johnson et al. 2001; Hale & Shaw 2001; Featherstone 2004; Barnett, Cloke et al. 2005; Wills & Hale 2005; Micheletti & Stolle 2007:163f; Hughes, Wrigley et al. 2008). More than 100 organisations of the anti-sweatshop movement tell stories of factory workers, about their working conditions and about the violations of their rights. They place their activities in the popular media and culture, using corporate vulnerabilities like logos and brand images (→ Figure 6) (Micheletti & Stolle 2007:163f). The work of the anti-sweatshop movement is based on the hope that companies implement corporate responsibility practices because they fear being involved in scandals and losing their good reputation (Gereffi, Garcia-Johnson et al. 2001). Some empirical studies, however, indicate that the influence of NGOs, at least on corporate environmental management decisions, is limited (Gago & Antolin 2004; Braun & Starmanns 2009).

Civil society groups link up with consumers to provide the movement with power against corporations, particularly if consumers use forms of protest against companies (Barnett, Cloke et al. 2005). Micheletti & Stolle (2007:166) present four different roles consumers can take in ethical campaigns.

First, consumers can **support a group for a broader cause**. For unions “consumers are supporters that help them to solve sweatshops problems through increased unionization, which they argue will empower workers and give them a formal platform to negotiate with employers and sign collective agreements that guarantee decent wages and working conditions, thus making sweatshops history” (Micheletti & Stolle 2007:166).

Second, while most other anti-sweatshop activists support the union cause, they also want consumers to play a more dynamic and independent role by becoming a critical mass of **fair trade shoppers**: “For them, consumers – not unions – can become the countervailing power to corporations. ... For them, when consumers better their consumer practice, they promote the development of a market for sweat-free goods and

indirectly influence corporate policy and practice. These organizations believe that critical mass shopping is an important step toward a more equitable world” (Micheletti & Stolle 2007:166).

Third, stirring up consumer culture by e.g. Adbusting, is regarded as the most independent consumer role (→ Figure 6) (Micheletti & Stolle 2007:167f). Here, consumers are seen as ontological **agents for social change**. In this understanding a change in the worldview of consumer culture and corporations will facilitate ‘grand social and political change’. Stehr (2007) similarly talked of a ‘moralising’ of markets.

Finally, consumers can be a **spearhead force for corporate change**, which is seen as the most important fundament of the CCC identifying itself as: “a European consumers pressure group and consumer campaign whose strength comes from consumer power and people becoming a ‘community of consumers’ rather than just ‘autonomous shoppers’” (Micheletti & Stolle 2007:167). In this sense “corporate vulnerabilities like the brand are very consciously and explicitly used to hit corporations where it hits most, because ‘brand name companies compete intensely for consumer loyalty, and therefore consumers can influence how these companies operate’”.

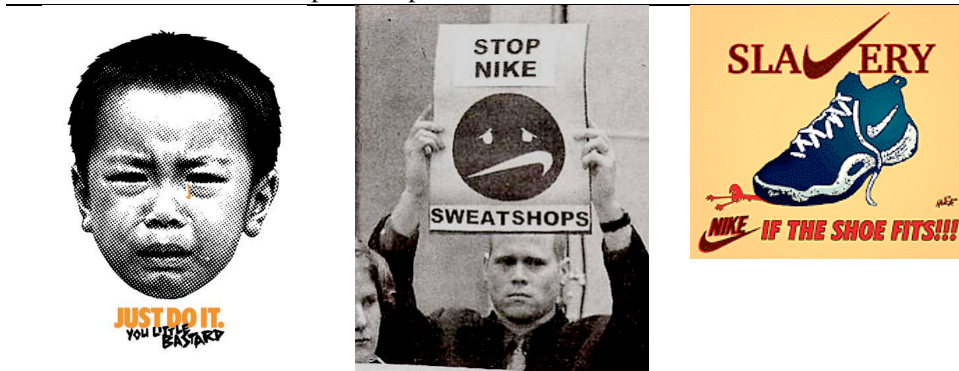


Figure 6: Examples of anti-Nike cultural jamming<sup>18</sup>

## 2.4 Structural injustice and shared responsibility for workers

While anti-sweatshop campaigns hold lead firms responsible for poor working conditions in their suppliers’ factories in developing countries, the lead firms often deny their responsibility, claiming that the factory managers or the national governments are responsible. I claim that the theoretical concepts of liability, structural injustice and political responsibility help to better understand arguments regarding corporate social responsibility in global supply chains.

According to the so-called **liability model**, the managers of factories are responsible for labour right violations that happen inside a factory and that violate legislation.

*The most common model of assigning responsibility derives from legal reasoning to find guilt or fault for a harm. Under the fault model, one assigns responsibility to particular agents whose actions can be shown as causally connected to the circumstances for which responsibility is sought. (Young 2004:368)*

<sup>18</sup> A: <http://shirtspotting.files.wordpress.com/2007/08/sweatshop.jpg>, B: <http://www.irtfcleveland.org/economicjustice/sweatshops/nike.gif>, C: <http://thegreatredression.files.wordpress.com/2010/01/nike-sweatshops.jpg>

The liability model makes factory managers morally and legally responsible for the effects their actions have on workers (Young 2004, 2006; Tullberg 2006). National governments have to ensure that companies operating within their territory act according to national laws, which are guided by United Nations' (UN) conventions and particularly the core conventions of the ILO.

Although national labour laws are often quite strict and correspond to the core conventions of the ILO, governments are often unable to maintain working standards (Scherer & Palazzo 2008). The administration might not have enough staff to monitor working conditions in factories, their staff may be corrupt, or the government of the developing country may evaluate the gains from export and foreign direct investment as being higher than the gains from maintaining high labour standards in the industry. Governments thus try to create 'favourable' conditions in their own country in order to attract investment. Some multinational corporations use this situation to their advantage, choosing a location where the institutional and legal setting corresponds to their aims (Scherer & Palazzo 2007:1101). Doing this, they reconstitute the prevailing structures. Some cosmopolitans have therefore questioned whether nation states of developing countries are the right body to create justice in a globalized world (see for example Kuper 2005; Scherer & Palazzo 2007; Palazzo & Scherer 2008; Scherer & Palazzo 2008).

Iris Young (2004, 2006) argues that it might not be morally correct to point fingers at single actors, such as governments in developing countries, corporations or consumers, and blame them as the only ones morally responsible for rectifying injustices in complex supply chains. In her view, injustice in supply chains without clear-cut causality might rather be the mediated result of complex global structures, such as global competition, into which nation states and corporations are embedded. Consumers also drive these structures. Young suggests that injustice in global garment supply chains shall be seen as 'structural' injustice. She defines structure as "a multidimensional space of differentiated social positions among which a population is distributed" (Young 2006:111). Structures "constitute the historical givens in relation to which individuals act, and which are relatively stable over time" (Young 2006:112). Social structures are relevant in our context because they serve as the background condition for individual action. Structures present actors with options and provide 'channels' that both enable and constrain action (Young 2006:112). Single actors in global value chains are therefore enabled or constrained by structures, and their actions permanently reproduce and change structures, as Giddens explains in his 'structuration theory' (Young 2006:113). However, the channels that enable and constrain actors are unevenly distributed: some have minimal opportunities with little benefits (e.g. workers in the sewing factories), whereas others have wider opportunities with greater benefits (e.g. shareholders of a European garment company).

Young suggests applying the structural background conditions to the situation of sweatshops. These are embedded into spatially distributed actions on local, national and global levels that permanently produce and reproduce social structures in global supply chains – and everyone is involved in these (Massey 2006). For instance, national politicians liberalise trade in garments through global trade agreements, thus increasing

the competition that requires factory managers to work more cost effectively. Consumers in Europe want to be stylish, and regularly *need* new and cheap clothes. Clothing retailers both follow these demands and try to manipulate them. Frequently changing fashion drives order sizes and order frequency, and these constrain buyers and manufacturers' freedoms. As a result of these structures, factory managers, for instance, make their labourers work overtime. But managers are influenced by consumers, lead firms, lifestyle magazines and others, and they all permanently reproduce these structures (e.g. by producing and propagating new fashion styles and thus demands). Young therefore argues that social structure is the product of aggregated historical actions and decisions, but in ongoing process, and thus in a constant flux and open to change. Young sums up **structural injustice** as (Young 2006:114):

*a kind of moral wrong in contrast to the wrongful action of an individual agent or the wilfully repressive policies of a state. ... Structural injustice occurs as a consequence of many individuals and institutions acting in pursuit of their particular goals and interests, within given institutional rules and accepted norms.*

She argues that assigning responsibilities is very difficult in a situation of structural injustice, where people just follow their ordinary roles in society. The result is that myriads of individuals and institutions cause structural injustice that cannot be solved through one actor alone: "We live in a world seemingly organised by no one, which cause harm to others in a systematic manner to distant others" (Cloe 2002). Problems arise, while everyone acts in accordance with prevailing institutional rules and norms: The consumer in Europe buys his or her clothes absolutely legally, and without bigger efforts he or she will not find out whether the purchase is directly connected to child labour or different problems that he would reject morally. Similarly, corporations in Europe buy the clothes from exporters abroad. They normally settle their contracts within the legal frames of the European Union. Some of them put social or environmental clauses into the contracts. Factory owners try to place responsibility on aspects outside the factory, e.g., competition and unemployment: "it is better to have a job than to have none" (Young 2004:369). And the fact that local states are either inept or corrupt derives, as states will argue, from being under severe competitive pressures that prevent them from improving working conditions (Young 2004:369ff). The owners, managers, and local states claim that they operate under constraints beyond their control (structural economic and social processes) that give them few options. No one would call consumers and corporations criminals, yet, together all actors create conditions that reproduce injustice in factories. How then to define responsibility in globally connected supply chains where corporations cannot be seen as responsible according to a liability model?

Young suggests a social connection model, which she terms '**political responsibility**' (Young 2004; Young 2006). In this view, actors are responsible because they belong to a structure and participate in processes through which they seek benefits, but through which they produce unjust outcomes. Young argues that actors are responsible for what they have *not* done, because no isolatable perpetrator can be allocated to be responsible in complex situations. Therefore all actors causing structural injustices must engage in public discourses that help rectify the problems.

*All the persons who participate by their actions in the ongoing schemes of cooperation that constitute*

*these structures are responsible for them, in the sense that they are part of the process that causes them. (Young 2006:114)*

As an alternative to the liability model, Young proposes a model that shall help conceptualise responsibility for producing and rectifying structural injustice in complex situations like global supply chains (Young 2006:115). This model has **five** criteria that groups involved in structural injustices can use in order to discharge political responsibility:

- A. **No actor isolation:** Single actors should not be isolated responsibility-wise. Isolating concepts of responsibility are inadequate when harms result from participation of thousands of people.
- B. Judging **background conditions:** Political responsibility “brings into question precisely those background conditions that ascriptions of blame or fault assume as normal”. One produces and reproduce structural injustice by following the accepted and expected rules and conventions, often in a habitual way, acting in accordance with one’s aims – e.g. fashion system, devoting more money to advertising than to production (Young 2004; Massey 2006:94; Young 2006:120). These background conditions must be challenged, i.e., we need openness to plurality and to problematize what we take as given, necessary, ordinary or ordered.
- C. Political responsibility is **forward-looking**, not backward-looking: It tries not to reckon debts, but to bring about results – thus it depends on everyone who is in a position to contribute to results: “Having understood that structural processes cause some injustices, those participating in the production and reproduction of the structures should recognize that their actions contribute along with those of others to this injustice, and take responsibility for altering the processes to avoid or reduce injustice.” (Young 2004:378)
- D. **Shared responsibility:** All who are producing or reproducing the structural conditions causing structural injustice share a responsibility for this injustice.
- E. **Discharged only through collective action:** Responsibility can be discharged only by joining with others in collective action.

Finally, four parameters define how much responsibility single actors should take: power, privilege, interest, and collective ability (Young 2006:127ff).

- First, **power** indicates that in the situation of shared responsibility those actors that are in a powerful position to act or change things have a greater responsibility for action. Young argues that a large brand such as Calvin Klein has a greater power than a smaller one and supports the focus of the anti-sweatshop movement on large brands (Young 2006: 127).
- Second, referring to **privilege** she argues that people who benefit relatively from structural injustices “have special moral responsibilities to contribute to organized efforts to correct them, not because they are to blame, but because they are able to adapt to changed circumstances without suffering serious deprivation“ (Young 2006: 127f). Accordingly, rich people are seen as apt to spend more money on clothing in order to ensure that the workers are treated fairly.



- Third, she argues that different actors have divergent **interests** in the transformation of structures that produce injustice (Young 2006:128). As workers have more interest in changing the situation and also a better insight into their own situation, they have “a responsibility to work together to improve their situation“. But she adds that they are unlikely to succeed without the support of less vulnerable actors, like NGOs. She criticizes approaches ignoring workers as being paternalistic.
- Fourth, as there are many injustices that need remedy, she regards „the relative ease with which people can organize collective action to address an injustice“ (**collective ability**) as a principle to decide where to engage.

In sum, Young argues that all actors share a responsibility to collectively engage in solving problems like poor working conditions in factories, and she provides some parameters to assess one’s own responsibility.

## 2.5 Conclusions for further research

I suggest from chapter 2 that the following questions have to be analysed closer in this research:

- Which voluntary practices do companies use to discharge their share of responsibility?
- How do ethical campaigns pressurize companies? How do companies realize the power of ethical campaigns?
- What role do background conditions (e.g. power) play in corporate responsibility practices?
- How can responsibility, power etc. be analysed empirically?

The next chapter examines more concrete practices of how corporate responsibility is put into practice.

# 3 Corporate responsibility and social standards in global supply chains

In recent years the regulation of global business activities has shifted from the public to the private sphere, where it is referred to as private regulation or corporate responsibility<sup>19</sup> (Fuchs 2007; Hughes, Buttle et al. 2007:494). Compared to *mandatory* state or public regulation, corporate responsibility and private regulation are *voluntary* ('soft law'<sup>20</sup>) – in other words, companies applying corporate responsibility practices are not legally obliged to do so, as in 'hard law', and cannot be sanctioned by governments (Deutscher Bundestag 2002; United Nations 2007:14).

I argue in this chapter that many companies voluntarily share responsibility for workers in their supply chains, as Young demands, but that there are tremendous differences in the practices used. This is relevant in so far, as voluntary regulation often de facto replaces mandatory and democratically legitimized state regulation. In voluntary regulation private actors, defining corporate responsibility are not democratically legitimized. By consequence, the credibility of private regulation and its legitimacy from a democratic point of view is often low.

In chapter 3.1, I define corporate social responsibility and distinguish two fundamentally different models, namely, 'positivist' CSR and 'political' CSR. In chapter 3.2, I present private standards initiatives, the variety in the approaches to implement standards, and how they are criticized. In chapter 3.3, I discuss key challenges of CSR in supply chains from the literature, mainly referring to effectiveness, credibility and legitimacy.

## 3.1 Corporate social responsibility

The broad idea of CSR as a voluntary and not mandatory mechanism to regulate globalized business behaviour is winning support from policy-makers in national governments and intergovernmental organizations. It is underpinned by the assumption that firms are capable of governing themselves in the absence of effective international and national laws (Blowfield & Frynas 2005:502).

### 3.1.1 What is corporate social responsibility?

The term 'corporate responsibility' (CR<sup>21</sup>) is an umbrella term that deals with the role of

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<sup>19</sup> Some refer to the private regulation of social or environmental standards in supply chains as 'ethical trade'. Private regulation and corporate social responsibility can also be subsumed under 'voluntary regulation'.

<sup>20</sup> The following terms can all be summed up as soft regulation: global governance, private regulation, voluntary regulation, network governance, private governance, business-self regulation, civil regulation, civil governance, co-governance, co-regulation, corporate social responsibility, ethical trade, fair trade, multi-stakeholder regulation, non-state market-driven mechanisms, etc. – the list could continue.

<sup>21</sup> The well-known abbreviation CSR refers to 'corporate social responsibility'. Some suggested to replace it by CR, since the latter also includes environmental aspects. I will refer to it as CSR, as I focus on social issues.

business in society. It refers to the voluntary activities a company undertakes in order to behave responsibly and includes a variety of issues and practices: environmental management, health and safety, human rights, community capacity building, philanthropic activities, and the like. The broadness of the concept has been criticized, as it “can be anything you want it to be” (Newell & Frynas 2007:673). Blowfield & Frynas (2005:503) define CR as an umbrella term that includes the following features:

- Companies have a responsibility for their impact on society and the natural environment, sometimes beyond legal compliance and the liability of individuals;
- Companies have a responsibility for the behaviour of others with whom they do business (e.g. within supply chains);
- Business needs to manage its relationship with wider society, whether for reasons of commercial viability or to add value to society.

In this research ‘corporate social responsibility’ (CSR) mainly refers to rules and practices used to implement social standards into supply chains. These rules and practices usually include the setting and monitoring of social standards, interacting with stakeholders, training suppliers, reporting, and modifying purchasing policies – the exact content of CSR action by a company, however, depends on its particular approach (→ CH 3.2) (Blowfield & Frynas 2005:507; Phillips & Caldwell 2005; Utting 2005b:2; Hughes 2006b).

Many politicians like to see voluntary CSR practices as a part of the solution to the problem of world poverty and, partially, as a substitute to state-regulation (European Commission 2001; Prahalad 2006). Proponents of CSR argue that it can mitigate social or environmental problems caused by economic action. In theory its voluntarism and flexibility allow companies to induce cost-efficient improvements (compare Newell & Frynas 2007:673; Blowfield & Murray 2008). Another advantage of CSR is seen in its consensual outcomes, i.e. that it captures and presents “the moral dimensions of capitalism in ways that resonate with investors and consumers, and are actionable by managers“ (Blowfield 2005:523).

### **3.1.2 Business-case corporate social responsibility**

The engagement with stakeholders and with CSR issues that go beyond what is legally required has often been legitimated by the financial benefits a company can gain from it. If CSR generates tangible or intangible financial benefits it is usually referred to as a ‘business case’ (Waddock & Graves 1997; Margolis & Walsh 2001; Blowfield & Murray 2008:130ff; Kurucz, Colbert et al. 2008; Orlitzky 2008). Kurucz et. al (2008:85ff) differentiate four types of business case value creation:

- Cost and risk reduction: Engaging in CSR to reduce costs and risks to the firm
- Competitive advantage: A strategic approach to CSR to build relative competitive advantage
- Reputation and legitimacy: Exploiting CSR activities to build value through gains in firm reputation and legitimacy

- Synergistic value creation (win-win): Integrating stakeholder interests to create value on multiple fronts

The business case for CSR has particularly gained prominence with regard to environmental issues, where calculable cost reductions are a driver for engaging in CSR (Porter & van der Linde 1996; Braun 2003; Blowfield & Murray 2008:130ff). However, the degree to which a company profits from CSR varies from case to case and cannot be generalized. It is influenced by factors relating to the company, the particular CSR practice, the socio-institutional context into which the company is embedded, and the like (Doh & Guay 2006; Blowfield & Murray 2008:131ff). Hence, due to the difficulties to pinpoint effects in financial terms and the uncertainties of these effects many companies still do not engage in business case practices. These difficulties make issues of corporate responsibility a somewhat vague concept that is very much dependent on the single case.

Instrumental stakeholder theory suggests that for practical, business-related reasons, companies should manage their important stakeholders (Freeman 1984; Freeman 1994). One problem is to identify the (salient) stakeholders so that managers can manage them efficiently (Mitchell, Agle et al. 1997). Others claim that firms should not only manage stakeholders that are instrumentally relevant, but also those that have a normative claim (Donaldson & Preston 1995). However, this theory does not say how stakeholders shall be managed once they are identified. There are many forms of stakeholder interaction, reaching from passive informing to active engagement (regarding environmental communication, see Braun 2003:107).

Geographers have recently argued that consumers are salient stakeholders because their purchasing practices are increasingly shaped “by considerations of companies’ ethical reputations” (Barnett, Cloke et al. 2005; Barnett & Land 2007; Clarke, Barnett et al. 2007a; Clarke, Barnett et al. 2007b; Hughes, Wrigley et al. 2008:349f). Consumers’ decisions are seen as influenced by intermediaries like NGOs, advocacy groups, social movements or the media (Hughes, Wrigley et al. 2008:350 quoting Clarke 2007). These are said to provide stories and images that encourage consumers to buy responsibly and “assemble the disparate practices of anonymous consumers into coherent indices of ‘ethical’ preferences in the effort to exert normative force over state agencies and corporations” (Hughes, Wrigley et al. 2008:351 quoting Clarke 2007:241). In this view, the way NGOs and social movements frame their critique against companies in the media influences how consumers consume and how companies engage in corporate responsibility activities. Companies manage such stakeholder pressure in business-case CSR strategies – but the reactions are manifold (Blowfield & Murray 2008:158f).

### **3.1.3 Embeddedness of corporate responsibility practices**

The national-institutional contexts in which retailers and brands are based play a key role in shaping corporate approaches to applying labour codes in their global supply chains (Christopherson & Lillie 2005; Hughes, Buttle et al. 2007; Newell & Frynas 2007:675). In a case study Hughes et al. (2007) compare different PSI that originate in the UK (ETI) and the US (FLA, WRC), arguing that the national context has an influence on the way the initiatives are institutionalized. Their study shows that in contrast to the UK approach,

the US initiatives demand strict transparency and have a significant legal dimension. The transparency “reflects the notion of consumer sovereignty lying at the heart of the US anti-sweatshop movement, and in effect enrolls consumers into the auditing process as a critical audience in a way that is absent from organised ethical trading programmes in the UK” (Hughes, Buttle et al. 2007:504). The stronger legal dimension of the US approaches are understood as being caused by the work of US-based labour rights groups like Human Rights First and the International Labor Rights Fund, both of which are run by lawyers and experiment with legal frameworks such as the Alien Tort Claims Act (which holds corporations accountable for actions affecting foreign workers). This is seen as a reason why the FLA approach is more rule-based and monitoring focused, whereas the approach by the ETI that is based on ‘third-way’ policy focuses more on learning and best practices and is more principle-based (Hughes, Buttle et al. 2007:496ff,508).

### 3.1.4 Two concepts of corporate responsibility: ‘positivist’ vs. ‘political’

Palazzo & Scherer (Palazzo & Scherer 2006; Scherer & Palazzo 2007; Palazzo & Scherer 2008; Scherer & Palazzo 2008) roughly differentiate between two concepts of CSR.

#### The dominant ‘positivist’ concept of CSR

Palazzo and Scherer argue that the dominant ‘positivist’ CSR concept has its foundations in the liberal model of democracy. It strictly separates private economic activities and public political activities and makes corporations subjects of legitimacy rather than objects to it (Palazzo & Scherer 2008). The liberal model of democracy is sketched as follows (Palazzo & Scherer 2006:74ff; Scherer & Palazzo 2007:1106 referring to Elster, 1986 & Friedman 1962): Corporations contribute to the welfare of society through their self-interested market transactions, and their decisions are legitimated by the *results* they produce. As *a-political* actors they are not subjected to immediate legitimacy demands, i.e., they do not have to expose their decisions to public scrutiny as long as they comply with laws and moral customs. Friedman’s (1970) famous description of profit as the only social responsibility of a corporation is a modern reflection of these deeply ingrained overarching concepts of liberal political legitimacy. In the liberal model the state establishes the conditions of the existence of the market, defines the ‘rules of the game’ and enforces them. It applies laws or enacts new regulations to protect the legitimate concerns of stakeholders. The state is seen as the only political actor who has to justify and democratically legitimate decisions. It only interferes in private affairs and constrains individual freedom if it is unavoidable. Economists suggest that states must take care of the concerns of citizens and regulate the economic system in such a way that private freedom is guaranteed and that the results of individual rational action will contribute to, or at least will not negatively influence, the well-being of society.

Scherer & Palazzo believe that economic globalization has led to a so-called post-national constellation in which the ‘rules of the game’ have changed (Palazzo & Scherer 2008:774). National governments lose power over corporations, whereas companies gain power. Even if public and private actors get involved in multi-level regulation networks, these lack enforcement mechanisms and democratic control (Palazzo & Scherer 2008:774; Scherer & Palazzo 2008:426). As the ‘positivist’ model of CSR is based on the

liberal model, they argue, it ignores the post-national constellation. They conclude: “the sole emphasis on economic rationality will not contribute to economic welfare, but rather may worsen the situation” (Scherer & Palazzo 2008). ‘Positivist’ CSR is therefore built on a view of organizational legitimacy that does not allow companies to maintain and reproduce legitimacy (Palazzo & Scherer 2006:78,81).

### Organizational / corporate legitimacy

Palazzo & Scherer build their argument on the concept of organizational legitimacy that deals with the legitimate or normatively appropriate role of business in society and provides companies with guidelines on how to behave responsibly (Palazzo & Scherer 2006:72). Referring to Berger & Luckmann (1966), Palazzo & Scherer assume that legitimacy is subjectively perceived and ascribed to actions or institutions by social construction. They claim that in the context of global supply chains the “legitimacy-ascribing environment is not very homogeneous” and one can observe a multiplicity of conflicting legal and moral demands.

In their view corporations are political actors that discursively manage their organizational legitimacy through reasoning, arguing and discussing in order to survive. Organizations with a fragile legitimacy run the risk of being perceived as irrational and unnecessary (Palazzo & Scherer 2006:71,74). Scherer and Palazzo build on a concept by Suchman, who defines organizational legitimacy as “a generalized perception or assumption that the actions of an entity are desirable, proper or appropriate within some socially constructed system of norms, values, beliefs, and definitions” (Palazzo & Scherer 2006:71 quoting Suchman 1995:574). According to Suchman (1995) organizational legitimacy has three elements (→ Box 1).

#### Box 1: Organizational legitimacy

- **Pragmatic legitimacy** results from the calculations of self-interested individuals who are part of the organization’s audience, e.g. the corporation’s key stakeholders or the wide public. These individuals ascribe legitimacy to the corporation as long as they benefit from corporate activities. The key challenge for corporations therefore is to persuade key stakeholders (and the wider public) of the usefulness of its output, procedures, structures and leadership behaviour. Typical practices are lobbying, branding, or strategic public relations.
- **Cognitive legitimacy** emerges when the societal context regards an organization and its output, procedures, structures and leader behaviour as inevitable and necessary. Acceptance is based on some broadly shared *taken-for-granted assumptions* (e.g. shareholder-value ideology, free and open market narratives, normative homogeneity). Cognitive legitimacy mainly operates on the subconscious level, making it difficult or even impossible for the corporations to directly influence and manipulate it strategically.
- **Moral legitimacy (discursive legitimacy)** refers to conscious moral judgements on an organization’s output, procedures, structures and leaders. Giving and considering reasons to justify certain actions, practices or institutions socially constructs moral legitimacy. Corporations can win moral legitimacy only through their vigorous participation in explicit public discussions – but not by manipulating and persuading opponents: “the attempt to engineer moral legitimacy, through symbolic or strategic activities, such as instrumental public relations or political lobbying, may even increase moral indignation and further reduce public acceptance.” (Suchman 1995:574)

Source: (Palazzo & Scherer 2006:72ff), (Suchman 1995)

Organizational legitimacy can result from the organization’s cultural embeddedness that is displayed in its compliance with generally accepted norms, values and beliefs in society. In this perspective, organizational legitimacy is a continuous and often unconscious adaptation process in which the organization reacts to external expectations. A strategic approach to managing legitimacy, however, views legitimacy as an ‘operational resource’ that can be managed and directly influenced by the corporation. In this perspective legitimacy is based on the corporation’s ability to “instrumentally

manipulate and deploy evocative symbols in order to garner societal support” (Suchman 1995:572).

In Palazzo & Scherer’s view the ‘positivist’ CSR model mainly rests upon cognitive legitimacy and tries to strategically manage the pragmatic concept of corporate legitimacy. It is only legitimate as long as it produces extra profits in the long term, though this may become problematic in a post-national constellation. Symbolic acts in terms of pragmatic legitimacy run the danger of being criticized as ‘green-washing’. They conclude that cognitive and pragmatic legitimacy are “not able to define a normative framework for the role of business in society that could help determine whether certain business activities are acceptable” (Scherer & Palazzo 2007:1098f). In their eyes “moral legitimacy has become the core source of societal acceptance” (Palazzo & Scherer 2006:78).

### **Politicize corporations: Legitimacy through public deliberative discourse**

Palazzo & Scherer demand a radical reformulation of how companies can generate and maintain legitimacy, suggesting that they must become ‘politicized’. Referring to Iris Young, they define ‘political’ as: “activities in which people organize collectively to regulate or transform some aspects of their shared social conditions, along with the communicative activities in which they try to persuade one another to join such collective actions or decide what direction they wish to take”. They call for adapting a discursive/communicative concept of organizational moral legitimacy that takes public discourse or ‘explicit public discussion’ as the basis for legitimacy (Palazzo & Scherer 2006:79; Scherer & Palazzo 2007:1108; see also: Courville 2003; Fung 2003; Steffek 2003). This system replaces implicit compliance with assumed societal norms and expectations with an explicit participation in public processes of political will-formation. By engaging in public discourses corporations construct moral legitimacy (Palazzo & Scherer 2006:81). From an ethical stance pragmatic legitimacy can also be seen as moral, therefore I rename ‘moral’ legitimacy to ‘discursive’ legitimacy<sup>22</sup>.

Scherer & Palazzo (Palazzo & Scherer 2006; Scherer & Palazzo 2007) use the concept of deliberative discourse to outline of a new form of regulation that goes beyond the traditional forms of democratic nation state regulation. Processes of deliberation lead to better and broader accepted political decisions and a deeper mutual understanding of the involved stakeholders. They contribute to creating or sustaining moral legitimacy, particularly when there is no “shared background of values and traditions” in the context of global supply chains (Fung 2003:52; Palazzo & Scherer 2006:79f; Scherer & Palazzo 2007:1111f). Corporations must remain open to critical deliberation as their primary source of societal acceptance. Deliberation is understood as a process through which participants address their conflicts, share information, exchange arguments and make decisions. Referring to Habermas, these scholars argue that it is the unforced “force of the better argument” (Habermas 1990:195) which produces in everybody’s perception a solution that was created jointly during the discourse (Scherer & Palazzo 2007:1105). Deliberation presupposes the willingness to expose one’s position to validity claims and

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<sup>22</sup> Thanks to Sonja Dänzer and Carsten Köllmann for this thought.

the motivation to strive for mutual understanding. In contrast to bargaining, participants are ready to change their opinions during discourse. As a precondition, a deliberative politics approach goes beyond narrow self-interested manipulations and includes a concern for the well-being of the whole, a concern that is reinforced by the process of deliberation itself. The challenge of communicative access to legitimacy is to engage in true dialogue, to convince others of the validity of one's arguments but not to persuade or manipulate people (Palazzo & Scherer 2006:81f).

The CSR-model Palazzo & Scherer propose rejects the reasoning of social contract theory, arguing that rules for society cannot be created on the desk, because every scientist is embedded into a certain historical and societal context (Scherer & Palazzo 2007:1105). They stipulate that it is not necessary to achieve an ideal speech situation in order to have positive effects of deliberation because in real societies suboptimal circumstances are unavoidable and discourses are not free of power (Scherer & Palazzo 2007:1109f,1114). They therefore suggest 'small steps' of constant improvement and transformation for real democratic processes and institutions (Scherer & Palazzo 2007:1107).

Scherer & Palazzo assume that by engaging in discourses that aim at setting or redefining standards and expectations in a globalized and changing world, corporations assume an enlarged political co-responsibility (Scherer & Palazzo 2007:1109). Corporations must proactively engage in the public process of exchanging arguments with stakeholders, while being transparent and accountable. They suggest that the *Forest Stewardship Council* (FSC) is one of the most advanced 'political CSR' concepts:

*The FSC is designed around deliberative criteria such as broad participation, the attempt to exclude corporate power as a decision criterion, and a constant process of improvement based on critical feedback about the council's performance or form of organization. The FSC does not represent a form of stakeholder dialogue, in which corporations invite stakeholders into their internal decision-making processes. Rather it represents a corporate move into the political processes of public policy making through the creation of and collaboration with global institutions of political governance.*

## **Discussion**

Some authors refute the use of deliberation in CSR as 'romantic' and as having "no place in the real world of globalized contexts" (Willke & Willke 2008). A more practical problem with both CSR concepts concerns the involvement of civil society groups: Which stakeholders should be involved in which way? Palazzo & Scherer (Scherer & Palazzo 2007:1109) argue that civil society actors suffer from the same legitimacy problems as corporations and suggest mitigating the problem to a certain degree through the multiplicity and diversity of civil society engagement. They also fear that NGO activists could be reluctant to engage in public discourses with corporations "because they fear the existing structural inequalities such as the power of a corporation on the outcome of such an discourse" (Palazzo & Scherer 2006:83). NGOs might therefore not be ready for shared solutions and would rather use resistance to create public awareness and corporate willingness to participate in public debates than cooperate with companies. Scherer & Palazzo view such resistance as similarly inappropriate as corporate lobbyism when trying to produce solutions based on moral/discursive legitimacy (→ Table 2).



**Table 2: Approaches to voluntary corporate social responsibility**

	<b>Positivist CSR</b>	<b>Political CSR</b>
Theoretical basis	Liberal model of democracy (Friedman, Hayek)	Discursive democracy (Habermas)
Corporations	A-political actors; profit-maximizing	Political actors, making profits
Basis of legitimacy	National laws & moral Cognitive legitimacy, profits	Discourse
How to manage legitimacy?	Gain pragmatic legitimacy	Gain moral (discursive) legitimacy

### 3.2 Private standards initiatives

While CSR defines the corporate responsibility practices of single companies, private standards initiatives (PSI) harmonize and institutionalize rules for corporate responsibility behaviour. A PSI sets rules for the responsible behaviour of companies in their supply chains. A company that joins an initiative usually has to implement the initiatives' Codes of Conduct in its supply chain according to the initiatives' rules. This may include some kind of control to check whether the social standards are indeed implemented. Most initiatives somehow report the engagement of its members. Companies that are members in such an initiative usually can use the initiative's label for public relations, and if members do not implement the codes, there are in some cases rules for sanctioning them.

Private standards initiatives have been established to make the implementation of social and environmental standards more efficient, more effective and more credible. One positive effect of code and auditing harmonization is the creation of a level playing field amongst the members of the initiative, which can turn corporate responsibility into a non-competitive issue for members. The initiatives also promise the reduction of audits and organizational learning effects.

PSIs can very roughly be separated into business initiatives and multi-stakeholder initiatives, though there are major differences within each group (→ Table 3) (also see: O'Rourke 2006).

**Table 3: Basic differences between business initiatives and multi-stakeholder initiatives**

	<b>Business initiatives (BI)</b>	<b>Multi-stakeholder initiatives (MSI)</b>
Examples for known initiatives	BSCI, Worldwide responsible accredited production (WRAP), Global Social Compliance Programme (GSCP), Rainforest Alliance	FLA, FWF, WRC, SAI (see table 4) FSC
Membership	Many members, since requirements are often rather low	Few members, since requirements are often rather high
Source of legitimacy	Pragmatic legitimacy Cognitive legitimacy	Input legitimacy Also maybe moral legitimacy
Governance / decision-making	Companies	Companies and various stakeholders
Impacts	No empirical scientific evidence; only claims by the initiatives	Claims that MSI have higher impacts, but there is no empirical evidence Overall low impact because few members

### 3.2.1 Setting rules for global business

**Business initiatives** (BI) represent the vast majority of private standards initiatives (Vogel 2008:269). In business initiatives companies make all the decisions. The *Business Social Compliance Initiative* (BSCI) that is discussed as a case study in chapters 7-10 is such an initiative.

**Multi-stakeholder initiatives** (MSI), in contrast, bring various stakeholders together in the sense proposed earlier (→ CH 2.4 & 3.1.3). MSI are defined as institutions in which diverse stakeholders from a broad societal spectrum come together to jointly address and negotiate a common solution to dealing with a problem that affects them all, such as implementing social standards. MSI exist for almost every business sector and within each sector various MSI might co-exist with very different foci or rules (O'Rourke 2006; Brown 2007; Fransen & Kolk 2007; Nölke & Granz 2007).

MSI in the garment industry bring together business actors and some of their stakeholders, who negotiate and mutually agree upon rules for global business operations (→ Table 4). These rules set social standards and prescribe how to implement them. Garment brands and retailers can become a member in one of the four MSI: FLA, FWF, ETI or WRC (→ Table 4). While *Social Accountability International* (SAI) is also a multi-stakeholder initiative, it sets the SA 8000 standard and rules for certifying factories according to this standard. Here, brands and retailers cannot become member, but they can ask their suppliers to become certified according to the SA 8000. The details of these five MSI have been compared elsewhere (O'Rourke 2006).

**Table 4: The most relevant multi-stakeholder initiatives in the garment industry**

	FLA	WRC	ETI	FWF	SAI
	Fair Labor Association	Worker Rights Consortium	Ethical Trading Initiative	Fair Wear Foundation	Social Accountability International
Country of origin	USA	USA	GB	NL	USA
Main concepts	Verification & learning	Audits & worker empowerment	Learning	Verification	Factory certification
Governance. Who sets the rules?	Companies, universities, civil society	University staff, labour experts, United Students Against Sweatshops representatives	Companies & civil society	Companies, NGOs, trade unions	Companies, NGOs
Auditing	Audits by auditors accredited by FLA	WRC own audit teams	Audits not mandatory	Verification audits by FWF audit team	Audits by SAAS-certified auditors

Multi-stakeholder initiatives were described as “one of the most innovative and startling institutional designs of the past 50 years” (Cashore, Auld et al. 2004:4; compare Vogel 2008:269f). Similarly, so far, literature on multi-stakeholder initiatives suggests that they are more effective, credible and legitimate than business initiatives (Pattberg 2004; Fransen & Kolk 2007).

MSI are said to be more **effective** mainly because of mutual learning processes. The interaction between stakeholders can lead to innovation and learning that does not occur

in business initiatives, where stakeholders do not interact in the same way (Bendell 2005:363; Hughes 2006b; Fransen & Kolk 2007:670). Sharing of knowledge can create new assets in terms of skills, understanding, trust and consensus building, which can enhance the mechanisms' effectiveness (compare Bendell 2005:363; Fransen & Kolk 2007). Furthermore, problems are directly dealt with and rules are more specific and elaborate because of the high level of stakeholder interactions (Bernstein 2001; Fransen & Kolk 2007). The interaction between stakeholders can foster a better understanding of the other stakeholders' motivations and positions, and of the problems' complexity: "Through understanding others' opinions and interpretations of the problem, the participants grasp the complexity of the problem and learn about interdependencies that were not apparent before" (Roloff 2008:317). Such learning processes are seen as the basis for a mutual agreement that is demanded by the 'political CSR' concept (Roloff 2008:318) (→ CH 3.1.3). In addition, the stakeholder interaction can generate knowledge that companies would otherwise not have, like of the specific local situation in factories. Some scholars argue that it is therefore unlikely that companies capture the problems factory workers have and meet their needs in a culturally sensible way, if stakeholders do not participate in decisions (Nelson, Adrienne et al. 2005; for the coffee industry Neilson & Pritchard 2007).

Many argue that MSI are more **credible** than business initiatives because it includes not only business actors, but also stakeholders from organizations that are critical of business (→ compare CH 3.1).

Dingwerth argues that the global making of rules has to be **democratically legitimate** (Dingwerth 2007). He distinguishes between a sociological ('empirical') and a normative ('philosophical') understanding of legitimacy. Legitimacy in the former is about the social 'acceptance of authority', whereas in the latter it is about the 'acceptability of authority' (Dingwerth 2007:14). Or in the words of Allan Buchanan and Robert O. Keohane:

*to say that an institution is legitimate in the normative sense is to assert that it has the right to rule". In contrast, "an institution is legitimate in the sociological sense when it is widely believed to have the right to rule. (Beisheim & Dingwerth 2008:8 zitieren Buchanan/Keohane 2006: 405, emphasis in original)*

As Beisheim & Dingwerth (2008:8) explain the normative concept of legitimacy traditionally applies to the authority of the state, who takes authoritative and binding decisions on others, and who is therefore required to morally justify itself. Such a justification "may be based either on fair procedures (*input and throughput legitimacy*, usually associated with procedural norms derived from democratic theory) or on just outcomes (*output legitimacy*, usually associated with norms derived from theories of justice)". Dingwerth argues that four criteria are relevant for input and throughput legitimacy: inclusiveness, transparency, accountability and deliberation (Beisheim & Dingwerth 2008:8). Elsewhere he distinguishes between legitimacy through participation, legitimacy through democratic control (transparency & accountability), and legitimacy through argumentative practice (deliberation) (Brown 2007; Dingwerth 2007:15f) (→ compare CH 3.1 & 2.4).

The need to integrate multiple stakeholders in the definition of global rules for business

is seen as important, as social and environmental standards are not facts but socially constructed norms that do not have one single valid interpretation. A sensitivity to other actors' perspectives is seen as relevant for setting and implementing global norms (Ilo 2003; World Bank 2003; Kolk & van Tulder 2005:17; Campbell 2007; Neilson & Pritchard 2007; United Nations 2007).

Although many regard multi-stakeholder initiatives as more effective, credible and legitimate than business initiatives, I claim that this is not valid per se, but it depends on the way rules are set and monitored.

### **3.2.2 Monitoring social standards**

Monitoring social standards (social auditing) controls the conformity with social standards and is said to represent "the means through which business responsibility is made practical" (Hughes 2001; Tallontire 2007:786). Social auditing shall generate accountability according to performance criteria that some agreed on and is connected to the rise of instruments in financial or managerial accountability.

#### **Social audit approaches**

Nadvi & Wältring (2002:8f) distinguish between three approaches to auditing which correspond to three different levels of legitimacy:

- First-party certification relies solely on self-monitoring by companies, i.e., the brand or retailer audits whether the factory implements the standards. In terms of public legitimacy, this usually results in the least degree of credibility and institutional trust.
- Second-party certification shifts monitoring to the user of the product or services, or alternatively to trade bodies who monitor on behalf of their members.
- Third-party certification „transfers monitoring to auditors that are external of the companies. The credibility of the certification is directly linked to the credibility of the auditor. Auditors can include accredited firms who provide market-based certification services, or NGOs and civil society groups who uphold the values associated with the specific standard.“ Hughes (2005:1158) argues that if NGOs audit instead of large auditing companies, "workers receive a degree of representation through organisations that work more closely with them and that do not have corporate goals of profit-making at their heart".

Third-party certification is the most interesting form of social auditing. It is used by most private standards initiatives (→ compare Table 5). O'Rourke (2006) distinguishes three forms of private regulation: SAI and WRAP (*advanced form of privatized regulation*) certify "that management systems are in place to guarantee acceptable performance in individual factories" (O'Rourke 2006). The certificates attract customers to select factories themselves. FLA, FWF and ETI (*collaborative regulation*) require top-level commitment of the brand that has to conduct internal and external audits of suppliers. Finally, the WRC approach (*fire alarm regulation*) aims at creating new mechanisms of accountability for firms and government agencies "by gathering information from workers and local organizations and then helping them to organize to win demands" (O'Rourke 2006). In terms of worker empowerment O'Rourke regards the fire alarm

system as the most advanced. But as Hughes suggests, the commitment of a company to incorporate responsibility influences how a company internalizes its approach to social auditing in the supply chain – which may lead to different ways of implementing the same rules (Hughes 2005:1153ff).

**Table 5: Comparing different monitoring approaches and criteria (own design)**

	State regulation	BSCI	SAI	WRAP	FWF	FLA	ETI	WRC
Nadvi & Wältring 2002		First & Third-party	Third-party	Third-party	First-& Third-party &	Third-party	First or Third-party	Third party
O'Rourke 2006	Policing / Command and control	Privatized/ Collaborative regulation	Privatized regulation	Privatized regulation	Collaborative	Collaborative	Collaborative	Fire alarm
Hughes 2007		Developmental			Developmental			
Who monitors?		Large audit firms	Large audit firms	Large audit firms	Rather small audit firms	Rather small audit firms		Local stakeholders & workers

### Criticizing social audit approaches

Four main issues are criticized in the literature with regard to audits in general and social audits in particular: (a) credibility, (b) neutrality, (c) audit techniques, and (d) paternalistic nature of audits.

First, to increase the **credibility** of audits, these are usually delegated to third-party auditors. According to principal agent theory auditing is problematic because of the information asymmetries between the principal (the one demanding the audit) and the agent (the one conducting the audit), which creates mistrust between the two actors. This mistrust must somehow be solved, for instance, by controlling audits or by setting up systems that do not allow auditors to cheat (Watts & Zimmermann 1983). However, third-party audits are often criticized for not being credible, because the wrong auditors use the wrong methods (Nadvi & Wältring 2002; ETI 2006; O'Rourke 2006). O'Rourke (2000), for instance, questions the credibility of third-party audits conducted through commercial audit companies like PWC, that come from financial auditing, and asks: "Who monitors the monitors?" Others argue that third-party NGO auditors might be co-opted from critical 'watchdogs' into uncritical 'partners' (Egels-Zandén & Wahlqvist 2007). Again, others fear that social auditing could 'crowd out' governments and/or trade unions in their traditional roles, which might have a negative impact on the workers.

It is further argued that the credibility of audits is low due to the lacking stakeholder participation, which could help identifying problems and finding solutions (Fung 2003; O'Rourke 2006:910). Others claim that the credibility of social audits can be improved by making audit results transparent and in this way allowing for a public discourse on how to improve factories (Courville 2003; Fung 2003; O'Rourke 2003; O'Rourke 2006). For instance, the WRC and the CCC have experimented in creating 'deliberative arenas' and systems through which remediation efforts are incorporated in collective bargaining processes (O'Rourke 2006:910). However, it is suggested that MSI have problems implementing stakeholders at a more concrete level of implementation instead of at just

an abstract policy level (Fransen & Kolk 2007:677).

Second, social auditing is often portrayed as a **neutral**, independent activity that focuses on collecting facts (Hughes 2004). This neutrality and independence has its origins in financial accounting, which proclaims a status of “a neutral, technical exercise essentially concerned with keeping accurate accounts with using the tools of auditing, budgeting and accounting to track and report on the allocation, disbursement and utilization of financial resources” (Newell 2006:50f). In addition, the use of analogies to scientific practices and routines like ‘testing’ supports the image that the results are neutral, independent and objective. Pentland (2000) writes about financial audits: “Put simply, the analogy suggests that while scientists illuminate natural truths, auditors illuminate financial truths”. He criticizes the analogy to science, questions the epistemology of auditing and asks for the nature of the assurance given by audits. He claims that in audits there is never a control group, as in scientific experiments. Instead each audit is a kind of uncontrolled experiment. Finally, Power (1999) argues that auditing is far from an objective exercise and that samples, tests, and interpretations are highly contextualized. Jem Bendell pinpoints:

*All auditing decisions are discretionary, at every moment of the audit process, from choosing who to talk to, to what to ask, how to ask it, what to follow up on, and what to recommend. (Bendell 2005:367)*

Third, others more concretely criticize the **audit techniques** used by larger auditing companies in social audits. For instance, auditors are ‘parachuted’ into the factory for a short time and thus only get a snapshot of the working situation and that voluntary inspection only works with producers allowing inspection (O'Rourke 2006). Other studies point out deficits of auditing, e.g. lack of autonomy of auditors, underreporting of violations, vague audit guidelines, lack of transparency, inadequate complaints mechanisms, inability to enforce freedom of association (Wells 2007:62). Further problems include audit coverage (particularly with a large number of suppliers), training and capacity of inspectors, corruption and negative effects on workers (O'Rourke 2003; O'Rourke 2006:907). Also, ‘audit fraud’, the deliberative faking of audits, increases in practice (Raworth & Kidder 2009:178):

*Perhaps most worryingly, members' experience shows an alarming rise in 'audit fraud': suppliers in key sourcing countries are increasingly adopting a raft of fraudulent practices that are designed to hide the truth about labour practices from auditors' eyes. Many corporate ethical trade teams recognise the problems, but face serious constraints to addressing them. (ETI 2006)*

Fourth, Hughes et al. (2007:1159) criticize social auditing as a **paternalistic approach** to ethical trade. They see the limits of even the most advanced audit approach as being deeply rooted in a neoliberal trading context in which retailers and brand manufacturers lead approaches to auditing. All rules and practices mirror Western models of development. Finally, partly because of these problems it is suggested that social auditing can only help identify issues, but by itself does not improve the situation of the workers in the factories. It has therefore been demanded that the approach be combined with other practices, such as changing purchasing practices (Locke, Qin et al. 2006; Barrientos & Smith 2007; Locke, Kochan et al. 2007).

### 3.3 Implementing social standards in supply chains: key challenges

The remainder of this chapter discusses – from a developmental perspective – key challenges to CSR approaches in supply chains that aim at implementing social standards. The main challenges refer to the effectiveness, credibility and legitimacy of CSR.

#### 3.3.1 Effectiveness: Do workers benefit?

There is little scientific evidence about the impact CSR in general has in developing countries<sup>23</sup>. There is also little evidence whether the potential advantages of MSI turn into a higher impact on the ground level for the workers (Utting 2002; Nelson, Adrienne et al. 2005; Prieto-Carrón, Lund-Thomsen et al. 2006; exception: Barrientos & Smith 2007; Blowfield 2007:685f,693; see also Newell & Frynas 2007:669-672).

John Ruggie of the UN Human Rights Council argues that the biggest challenge of voluntary regulation is bringing such efforts to a scale where they become “truly systemic interventions” (United Nations 2007:24,85; Wells 2007:63). This particularly refers to more challenging multi-stakeholder initiatives in which not many companies participate, while many participate in voluntary initiatives whose demands are easy to fulfil. Utting for instance complains that of the 77.000 transnational corporations, 770.000 subsidiaries and millions of suppliers only a very small fraction is member of an MSI (Utting 2005b:4; United Nations 2007)<sup>24</sup>.

#### Low or even negative impacts of voluntary regulation of social standards

The few studies analyzing the effectiveness of private standards initiatives in developing countries criticize that their impacts are low and can even be negative (Hughes 2004; Blowfield & Frynas 2005; Dhanarajan 2005; Jenkins 2005; Nelson, Adrienne et al. 2005; Utting 2005b:5; Barrientos & Smith 2006; Locke, Qin et al. 2006; Prieto-Carrón, Lund-Thomsen et al. 2006:986; Barrientos & Smith 2007; Locke, Kochan et al. 2007; Neilson & Pritchard 2007; Newell & Frynas 2007; Wells 2007; Nadvi 2008). For instance, Barrientos and Smith (2007) empirically show that membership in the Ethical Trading Initiative (ETI) only had little impact on the workers. Their results indicate that the ETI has positive impacts regarding *outcome* standards (like health & safety), while the politically more relevant *process* standards that empower workers to fight for their rights themselves, such as collective bargaining or freedom of association, do not change through ETI membership. Other studies confirm these findings (Locke, Qin et al. 2006; Locke, Kochan et al. 2007; UN 2007b:5; Locke, Amengual et al. 2009).

Others argue that the implementation of social auditing can even have negative effects, particularly if workers or factories are excluded from global production networks as a result of the standard implementation (Tallontire, Dolan et al. 2005:564; Prieto-Carrón 2008). This has happened when workplaces (e.g. homeworkers) did not fulfil the

<sup>23</sup> CSR initiatives “fail to address either the non-CSR poverty impacts of business practice nor acts of corporate irresponsibility. ... They fail to address difficult questions about treatment of suppliers and workers’ rights or about community reinvestment and obligations to invest over the long term or to provide job security. The range of development issues they address, while important, is limited. (Newell & Frynas 2007:679) CSR emerged among leading firms and business schools as a public relations tool, away to deflect criticism, engage critics and potentially capitalise one merging business opportunities associated with doing, and being seen to be doing, good. (Newell & Frynas 2007:670)

<sup>24</sup> UNCTAD, World Investment Report 2006) → UNCTAD 2004)

demanding standards, and it was easier for the buyer to change than to develop his producer. It has also happened when buyers consolidated their supply chains for efficiency reasons but did not consider the workers who lose their jobs (Nadvi 2008).

### Reasons for low impacts

The low impact of CSR is derived from its voluntarism, the neglect of the local context and of root causes. First, as a consequence of the **voluntarism** some say that most companies only engage in issues where a business-case can be made because they need to think economically and increase their profits (Blowfield & Frynas 2005; compare Newell & Frynas 2007:670,677; Blowfield & Murray 2008:130ff). This way, voluntarism can lead to ‘eye washing’ CSR activities with reputational benefits for the company, but with little impact on the workers. For instance, Blowfield (2005:512) argues that “labour codes of practice are far more likely to outlaw slavery and child labour (practices where there is little direct financial motivation to continue, especially compared to the potential consequences of a consumer backlash) than to recognize the right to a living wage or freedom of association (both of which many companies fear might work to their commercial disadvantage)”. Voluntarism is further connected to the problem of scaling-up, as described above. Scaling-up, particularly of CSR that goes beyond the business case, is seen as difficult because many economists and CEOs still question the legitimacy of CSR, and rather believe in shareholder than stakeholder values (→ CH 3.1) (Economist 2004). Rights-based developmental issues are seen as incompatible with voluntary thinking, because goals like helping the poorest and most marginalized are often not economically feasible and thus will not lead to business cases (Blowfield & Frynas 2005; compare Newell & Frynas 2007). Therefore some argue that CSR should not be regarded and framed as an instrument for development that is reaching the poorest, but only as an additive instrument for achieving business cases. They say it is necessary to overcome the dichotomy between voluntary and mandatory regulation. Thus, business regulation is able to combine both, the voluntary and legalistic approaches in a complimentary, re-enforcing and synergistic way (Blowfield & Frynas 2005; Utting 2005b; Vogel 2009:16).

Second, business seeks to find efficient ‘one-size-fits-all’ solutions that can be easily implemented top-down without recognizing the **local context** (Bendell 2005; Tallontire, Dolan et al. 2005; Prieto-Carrón, Lund-Thomsen et al. 2006). Newell criticizes that top-down approaches “assume a set of conditions that do not exist in most of the world” (Newell 2005:556). It is suggested that voluntary regulation should be sensitive to scale and adapt to local contexts (→ compare 3.1.3) (Blowfield & Frynas 2005; Neilson & Pritchard 2007:322; Newell & Frynas 2007):

*One-size-fits-all tools for the measurement of their social and environmental performance wherever they operate, ... are unable to address the key issues by which a company's social and environmental obligations come to be determined, enforced and made locally relevant. (Newell 2005:556)*

Third, most CSR and private regulation practices do not address the **root causes** of low working conditions in global production networks attributed to power relations in the global economy (Prieto-Carrón, Lund-Thomsen et al. 2006; Fuchs 2007). Some argue that voluntary regulation reproduces the (power) structures that cause the main problems



in global value chains, and thus make it even more difficult to solve problems in the long run. In this context, it is criticized that buyers often do not take responsibility themselves, but pass it on the producers. For instance, buyers take the reputational benefits of CSR while not changing their purchasing policies, which some see as major root causes for low working conditions (Mahmud & Kabeer 2006). Bendell (2005:368) similarly mentions that WRAP, the FLA, and the ETI all identify the problem of poor working conditions as something that is dealt with ‘over there’, in the factories and plantations across the global South. He claims that they should be dealt with ‘over here’, in the offices of large corporations that monopolise access to markets, drive down prices, require higher quality, and place short-notice ‘just-in-time’ orders for products. Here a contrast is pointed out between the ethical trade initiatives and the fair trade movement where fair trade sees changing buyer–supplier relations as key to any process of improving workers’ conditions.

### 3.3.2 Credibility & legitimacy

Lacking evidence about the positive impacts of social auditing on the workers has shifted the research on the credibility and legitimacy of voluntary regulation practices (Nelson, Adrienne et al. 2005; Barrientos & Smith 2007). When talking about credibility and legitimacy many refer to criteria derived from democratic theory, like participation and inclusiveness of stakeholders, accountability, transparency and deliberation (→ CH 3.2.1 & 3.2.2) (compare Steffek 2003; Dingwerth 2005; Matten & Crane 2005; Pattberg 2005; Utting 2005b; Pattberg 2006; Dingwerth 2007; Fuchs & Kalfagianni 2007; Nölke & Granz 2007; UN 2007b; Scherer & Palazzo 2008:426).

#### Inclusion or participation of stakeholders

Chapters 2.4 & 3.1.3 both propose deliberative solutions where different actors come together to agree on CSR policies in order to achieve a higher legitimacy and credibility. Scherer & Palazzo claim that corporations become morally legitimized by engaging in discussions with others, whether or not all actors participate (→ CH 2.4 & 3.1.3). However, others show that this view is too simplified and suggest that the inclusion of stakeholders needs to be differentiated into: (a) the scope of participation (Who participates?) and (b) the quality of participation (How do they participate?) (Dingwerth 2007:38ff).

Regarding the **scope of participation**, many claim that the ‘right’ stakeholders need to participate. But who are they in global production networks? Voluntary regulation activities are criticized in so far that ‘northern’ stakeholder dominate the processes while key ‘southern’ stakeholders (i.e. the intended beneficiaries) are poorly represented in the consultation and decision-making processes, and sometimes even fully ignored (Utting 2002; Bendell 2005; Utting 2005b:5; Fransen & Kolk 2007:676 referring to Freidberg 2003; Hughes, Buttle et al. 2007:495). This problem particularly refers to the most marginalized, e.g., women homeworkers (Campbell 2005; Matten & Crane 2005:9; MacDonald 2007). As Newell puts it:

*(The CSR debate might) become a conversation between managers of global capital North and South, and, on occasion, some elite NGOs and unions, many of which maintain only the most tenuous of*

*connections with poorer groups that are either ignored in this process or considered only as passive recipients. (Newell 2005:557)*

This ignorance is partly connected to the belief that NGOs or trade unions are representing the voices of the poor, though this may not necessarily be the case (Newell 2005:543f). Civil society groups might have their own agendas and interests that are not always compatible with promoting the priorities of the most marginalized or the ones most affected by the business practices, often the women (Newell 2005:552). Similarly, those who are totally excluded from the supply chain due to 'practical' reasons (like increasing the efficiency of audits), such as scattered homeworkers, non-permanent workers or small-scale producers, are also neglected from representation (Blowfield & Frynas 2005:507; Nelson, Adrienne et al. 2005; Tallontire, Dolan et al. 2005): "some major sporting goods companies, have reduced the amount of outsourcing to smaller producers in part because it is difficult to monitor those facilities" (Blowfield & Frynas 2005:508).

In regard to the **quality of participation**, it is also relevant how stakeholders are involved and whether they have the capacity to negotiate (e.g. whether weaker stakeholders have a voice or whether power relations are asymmetric) etc. (Bendell 2005; Newell 2005; Utting 2007). There are different modes of participation, from more passive (like receiving information via mass media or consulting), to more active ones like raising one's voice in a public debate or voting (Dingwerth 2007). Fransen and van Kolk (2007:679) suggest that MSI can be differentiated between those with a broad and a narrow level of inclusiveness. Whereas broad inclusiveness would 'truly' include stakeholders from North and South as members who take part in the decisions, in the narrow inclusiveness stakeholders would rather consult than participate by deciding. Some further suggest that 'true' participation of stakeholders could mean that they are empowered, which often does not happen (UN 2007b). This can lead to failures when identifying root causes, to unequal power relations in decision-making bodies or to co-option of NGOs (Bendell 2005:370; Blowfield & Frynas 2005:508; Prieto-Carrón, Lund-Thomsen et al. 2006:984f; Egels-Zandén & Wahlqvist 2007). Finally, Fransen & van Kolk (2007:675) criticize that most MSI do not reveal why they involve certain stakeholders. Doing this might be helpful in terms of including the 'right' ones based on true arguments.

### **Transparency and accountability**

Similarly important for the input legitimacy are criteria of **democratic control** that refer to the initiatives' transparency and the accountability (Dingwerth 2007). Democratic control asks who is able to exert control over decision-makers (Dingwerth 2007:30).

**Transparency** can help to make corporate responsibility practices more legitimate, credible and more effective (Sabel, O'Rourke et al. 2000; Fung 2003). The degree of transparency can be conceptualized as "the extent to which individuals who may be significantly affected by a decision are able to learn about the decision-making process, including its existence, subject matter, structure and current status" (Dingwerth 2007). Stakeholders have to be able to understand why a decision was taken, and then check and discuss whether the 'right' stakeholders are included. Some claim that audit results would

also have to be made transparent for the single factories, if they shall be a matter of deliberation (Sabel, O'Rourke et al. 2000; Fung 2003). Transparency can help to uncover power relation processes in decision-making mechanisms (Brown 2007:18ff). Some propose that public authorities could enhance the quality of public deliberation on CSR (Fung 2003). They could, for instance, guarantee the transparency of discourses, the monitoring and enforcement of corporate compliance, the comparability of information and standards, and the access of less powerful actors (such as workers) to deliberation. Two main questions concerning transparency are highlighted in the literature: What shall be reported? How shall the contents of reporting be controlled/certified?

Some authors say that even if stakeholders can participate in regulation mechanisms and if their participation is rightly balanced, the regulation mechanism must further be **accountable** to the intended beneficiaries. Accountability involves the element of answerability: “the right to make claims and demand responses”. It also involves enforceability, i.e., “the mechanisms for ensuring that answers are backed by actions and for sanctioning non-responsiveness” (Mahmud & Kabeer 2006:224; Newell 2006). Accountability empowers workers and allows them to voice complaints through a direct path. Researchers and practitioners demand that voluntary regulation includes accountability mechanisms (Bendell 2005:364; Utting 2005a:4; Brown 2007:18; UN 2007b). This can happen in the form of a voluntary complaints mechanism through which workers and other stakeholders are able to directly hold companies accountable for their actions (Bendell 2005:363).

A more radical demand is that corporate responsibility should be replaced by ‘corporate accountability’. The so-called ‘**corporate accountability**’ movement demands that companies must be legally accountable to adversely affected stakeholders (Bendell 2004; Campbell 2005:420; Utting 2005a:1-6; BUND 2007; United Nations 2007)<sup>25</sup>. In the corporate accountability movement national governments play an important role, which are seen as the only democratically legitimized bodies to regulate the economy. They should therefore provide a legal, mandatory framework that includes duties for corporations, and that enables and encourages global business to follow its legal obligations, e.g., by sanctioning non-compliance. One main argument presented in favour of mandatory rules is that a global framework with legally binding rules creates a level playing field in which every company producing for the world market sticks to the same rules. This would reduce distortions of competition, and stop the race to the bottom in social and environmental standards (Zervas 2008).

However, the corporate accountability movement has so far been little successful in pushing governments to implement any mandatory regulation mechanisms for social standards on the global level (compare for more examples Bendell 2004; Utting 2005b; Fuchs 2007:87; Newell & Frynas 2007:671). Bendell (2004) suggests that one problem of mandatory regulation has been the lobbying practices of powerful corporations against any attempt to establish mandatory global rules for business. Examples are the failed attempts of the UN Centre on Transnational Corporations (UNCTC)<sup>26</sup> to establish hard

<sup>25</sup> The main German civil society network campaigning for corporate accountability is: [www.cora-netz.de](http://www.cora-netz.de)

<sup>26</sup> <http://benchpost.com/unctc/> (accessed on 1.8.2008)

rules on a global level, or the failed attempt of NGOs to bring the UN Corporate Accountability Convention into effect during the World Summit on Sustainable Development 2002 in Johannesburg (compare for more examples Bendell 2004; Utting 2005b; Fuchs 2007:87; Newell & Frynas 2007:671). Utting (2005b:15ff) argues that in both cases corporations used the discourse on voluntary regulation and CSR to fend off demands. They claimed that their involvement in voluntary responsibility practices obviated the need for mandatory regulatory action, since voluntary mechanisms were sufficient to improve the social and environmental performance of business. Company duties were dismissed as polarizing and an obstacle to achieving the type of broad-based consensus needed to move forward.

### 3.4 Conclusions for further research

Voluntary CSR practices are legitimized – to a different degree – by referring to three aspects: (a) effectiveness/impacts, (b) credibility/legitimacy, and (c) efficiency. These aspects can be analysed and specified with help of the following questions:

- What is seen as the **root causes** for work-related problems? What role do the root causes play in the legitimization? How are they addressed?
- How do the actors try to construct **organizational legitimacy** (pragmatic, cognitive, moral/discursive)? Does an actor rather argue based on a ‘positivist’ or a ‘political’ concept of CSR?
- What role do the four aspects of **democratic legitimacy** – stakeholder inclusion/participation, transparency, accountability, and discursive quality – play in the arguments? How are they contested?
- What role does the **local context** play in the legitimization? How is it addressed?

## 4 Analytic framework: Corporate responsibility in global production networks

This chapter lays out the analytical framework I use to understand the main struggles and arguments in my case studies regarding corporate responsibility in global garment production. The framework conceptualizes the economic processes that connect various actors in supply chains, their power relationships, and the CSR practices needed to implement social standards and the actors involved in them. Finally, it frames the background conditions before which these processes occur, and it specifies questions for the empirical research.

My conceptual framework combines the work of Tallontire (2007) on private standards initiatives with the global production network (GPN). Tallontire's framework helps to structure CSR practices, in particular the regulation practices that corporations use to implement social standards, namely legislative, judicial and executive regulation. Chapter 7 presents the two empirical case studies along these lines, and also the empirical chapters (8-10) are organized according to the framework.

The GPN framework helps to connect the different actors involved in producing the clothes with those involved in the voluntary regulation practices<sup>27</sup>. It helps in understanding how brands/retailers govern their supply chain, but also the broader economic and political context around the struggles regarding corporate responsibility and the regulation of social standards. In particular, the categories and dimensions of the GPN help to conceptualize power relations between different actors involved, their embeddedness into local and global contexts, and aspects regarding value creation that may help to enable or limit corporate responsibility practices.

### 4.1 Framework for analysing corporate social responsibility practices

Tallontire (2007) helps structuring CSR and private regulation practices. She criticizes that most analyses of private standards initiatives (PSI) only look at specific aspects of private regulation, which might be derived from disciplinary boundaries. For example, many political scientists have focused on the setting of standards and aspects of democratic legitimacy without considering power relations in the supply chains that are relevant for a successful implementation of standards. Tallontire presents an enhanced framework for critical analysis of private standards initiatives in agri-food chains,

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<sup>27</sup> When referring to the implementation of social standards I use the terms private or voluntary 'regulation' and not 'governance', even if governance might express better the interplay between different actors. The term 'regulation', however, confuses less with the governance in the production network.

focusing on regulation and potential institutional impacts and aims “to facilitate conceptual analysis of private standards initiatives that includes both institutional/normative issues and structural/material factors” (2007:788).

Her framework uses the lens of civic regulation and the separation of powers “to unpack the activities and implications of these new (private standards) institutions and the standards that they are developing and implementing” (Tallontire 2007:785). This helps to look into the different aspects of rule making and rule keeping, what she calls legislative regulation, judicial regulation and executive regulation (compare Nadvi & Wältring 2002; Tallontire 2007). Tallontire (2007) suggests that a comprehensive analysis of private regulation practices must analyse all of the following three aspects or is incomplete.

- **Legislative regulation** (setting rules): From Tallontires’ view (2007:786) analysis under the heading of legislative regulation “would be concerned with the origin of the standard exploring the links it has with other standards, both in the public and private domain.” This includes questions like: How much does the standard draw on national or international standards? Who is involved in the setting of rules and who may be excluded? Is it industry-only or is it multi-stakeholder? What is the basis for participation?
- **Judicial regulation** (monitoring standards): Under judicial regulation the focus is on how compliance with standards is monitored and assessed. Who conducts the audits? How does the auditing relate to other forms of control (e.g. by the state)?
- **Executive regulation** (enable participants to meet standards): Executive regulation is about “the processes of standard implementation and the different tools that are used by the private standards initiatives to ensure that standards are met” (Tallontire 2007:786). As chapters 2 & 3 indicate, three main aspects need to be considered: The power of the lead agents (i.e. the purchasing practices), the management skills, and the abilities of the workers to demand their own rights.

Tallontire (2007:786) argues that it is important to map out who is involved in each of these processes, “particularly focussing on the extent and modalities of participation and representation of key stakeholders”. Hence, not only is the question of stakeholder inclusion and participation important, but also what kind of democratic control exists (political accountability and transparency) and how can the discursive quality be evaluated, i.e., whether it is a sincere exchange of arguments on the same level (→ CH 3).

## 4.2 Global production networks

In a critique of global chain approaches<sup>28</sup> Henderson, Dicken et al. developed the network-based framework ‘global production networks’ (GPN) (Dicken, Kelly et al. 2001; Henderson, Dicken et al. 2002). This framework shall help to “reveal the multi-actor and multi-scalar characteristics of transnational production systems through

<sup>28</sup> global commodity chains, global value chains or supply chains

intersecting notions of power, value and embeddedness” (Coe, Dicken et al. 2008b:267).

They criticize that chain approaches do not reflect reality properly, that they are too linear and idealistically stylized, and that they wrongly place emphasis on the ‘intra-firm’ governance in the chain, neglecting ‘extra-firm’ networks and institutional contexts on various scales (Henderson, Dicken et al. 2002; Hess & Yeung 2006; Coe, Dicken et al. 2008a; Coe, Dicken et al. 2008b; Gibbon, Bair et al. 2008:324; Nadvi 2008:324; Palpacuer 2008:413). The main advantages of the GPN in the context of this research are:

- conceptual inclusion of all major stakeholders participating in the regulation of standards,
- conceptual flexibility in terms of geographical scale,
- recognizing that actors are embedded in certain contexts (root causes, local contexts, ethical campaigning),
- allowing a more differentiated analysis and articulation of power than in the chain approaches,
- finally, it raises the possibility of identifying potential points of intervention or resistance within the network.

More recently, the GPN framework was also used for analysing CSR and how it is contested between different actors in global relationships, as it allows for conceptualizing different actors and their local backgrounds and their power configurations (Levy & Kaplan 2007; Coe, Dicken et al. 2008a:288; Levy 2008). It was shown that most actors involved in contested fields recognize conflict and cooperation (Coe, Dicken et al. 2008a:288). Similarly, although various organizations cooperate in social movements, the aims of the single actors might not always be compatible. The metaphor ‘friction’ was used to capture the contested, shifting and uncertain nature of the various relationships that constitute GPN (Coe, Dicken et al. 2008a:288).

*Simultaneously economic and political phenomena ... resemble contested organizational fields in which actors struggle over the construction of economic relationships, governance structures, institutional rules and norms, and discursive frames ... GPNs thus exist within the ‘transnational space’ that is constituted and structured by transnational elites, institutions, and ideologies. (Levy 2008)*

In the context of this research, two ‘conceptual dimensions’ from the framework are helpful. They constitute the framework and bring life to it, i.e., power is exercised and value is created through them (Henderson, Dicken et al. 2002:453ff). The **firm** dimension stresses that there are firm-specific differences within certain sectors. These differences are likely to influence the way GPN are constructed. The most powerful firm is usually the ‘lead firm’ of garment production networks, conceptualized earlier as driving the chain. Further, in the context of this research, direct suppliers and subcontractors are relevant. Important aspects in the input-output relations between firms are logistics and particularly logistical strategies, such as lean production and just-in-time production and certainly the buying contracts (Coe, Dicken et al. 2008a:276f). So far, the GPN and also chain approaches have been criticised for treating firms like *black boxes*, even though the strategies within firms differ widely (Coe, Dicken et al. 2008a:277). This is very evident for issues like corporate responsibility and it has been suggested that the corporate

responsibility strategies strongly vary between firms (Hughes 2005).

**Networks** reflect the flexibility regarding particular forms of regulation that apply to firms and stakeholders involved in the implementation of private standards. The dimension networks set out to examine **trust** relationships in the interactions of the different actors.

The framework for GPN analysis is raised on three underlying conceptual categories: value, power and embeddedness.

#### 4.2.1 Value

Value refers to the Marxian notions of surplus value and to more orthodox ones associated with economic rent (Henderson, Dicken et al. 2002:448f). The creation of value within firms in GPN includes the “conditions under which labour power is converted into actual labour through the labour process”. Issues of employment are relevant, like skill, working conditions, technology, and the circumstances under which they are produced (technological rents, organizational rents, relational rents, brand rents, trade-policy rents) (Henderson, Dicken et al. 2002:448f). The creation of value also includes the transaction costs that are caused by interactions between actors and limit their actions.

#### 4.2.2 Power

**Corporate power** refers to the capacity of the lead firm in the GPN to influence decisions and resource allocations in its own interests, vis-à-vis other firms in the network. The GPN framework does not ascribe a monopoly on corporate power to lead firms, but suppliers have sufficient autonomy to develop and exercise their own strategies. Small firms can improve their situation in GPN by allying with others. My framework also draws from the global commodity chain regarding corporate power (→ CH 2).

**Collective power** refers to “the actions of collective agents who seek to influence companies at particular locations in GPNs” such as ethical campaigns, NGOs concerned with human rights, trade unions, workers, consumers, business interest groups etc. In this research, the collective power of NGOs and ethical campaigns on brands and retailers play a central role. Coe et al. (Coe, Dicken et al. 2008a:280f,286) recently demanded that non-firm actors have to be integrated into GPN research in a ‘serious’ way. For example, consumers influence CSR, but they have so far been neglected in GPN research. Regarding the improvement of working standards, they also demand there is a need to open up analytical space for the agency of workers and worker groups “to shape the geographies of capitalism” (Coe, Dicken et al. 2008a:284).

#### 4.2.3 Embeddedness

The GPN framework uses Karl Polanyi’s concept of embeddedness. It helps understanding how global production networks and particularly single firms and other groups acting in it are shaped by local or national contexts and social and political relations with stakeholders (Taylor 2005; Hughes 2006a:636f). Geographers and other



researchers have analysed how the concept of embeddedness enriches GPN research, and they claim that it helps to understand firm-level chain governance and the development of standards.

*At the firm level, routines of interaction between suppliers and lead firms can be deeply rooted in domestic and even local institutions and culture, and often structure (enable or limit) firm-level GVC governance in an ongoing manner. (Sturgeon 2009:131f)*

*It is these nationally embedded philosophies and organizational approaches that are shaping specific pathways of transnational code development. (Hughes, Buttle et al. 2007:508)*

Embeddedness connects “aspects of the social and spatial arrangements in which those firms are embedded and which influence their strategies and the values, priorities and expectations of managers, workers and communities” (Henderson, Dicken et al. 2002:451f). The GPN distinguishes between three kinds of embeddedness:

- **Institutional embeddedness** refers to how activities are embedded in institutions, locally and globally. Institutions can be industry groups, advocacy groups, or rules that govern the society (either bureaucratically, as codified in legal canons and regulatory systems, or in the realm of societal norms and expectations). “The rules set by institutions are derived, to a greater or lesser degree, by the beliefs, values, meanings, and priorities embedded in the societies that create them, fund them, and staff them.” The negotiation of these rules is innately geographical, because it happens on multiple scales between actors situated in different places. Institutions are particularly relevant in the context of private regulation because they can limit or enable actions. Firms or managers that surpass those limits run the risks of sanction, creating pressure for firms to operate according to the norms and expectations of the societies in which they operate (Sturgeon 2009:131).
- **Network embeddedness** refers to the formal and informal connections and relations between network members, the stability of these relations, and the importance of the network for the participants, the network structure, and the degree of connectivity within a GPN (Henderson, Dicken et al. 2002:453). This embeddedness is a product of trust building between network agents. The embeddedness allows analysing more micro level relationships between the actors in the GPN.
- **Territorial embeddedness** refers to the ‘anchoring’ of firms in GPN in different places. For instance, firms might become constrained by the economic activities or social dynamics that exist in certain places or government policies might embed particular parts of the GPN in particular regions.

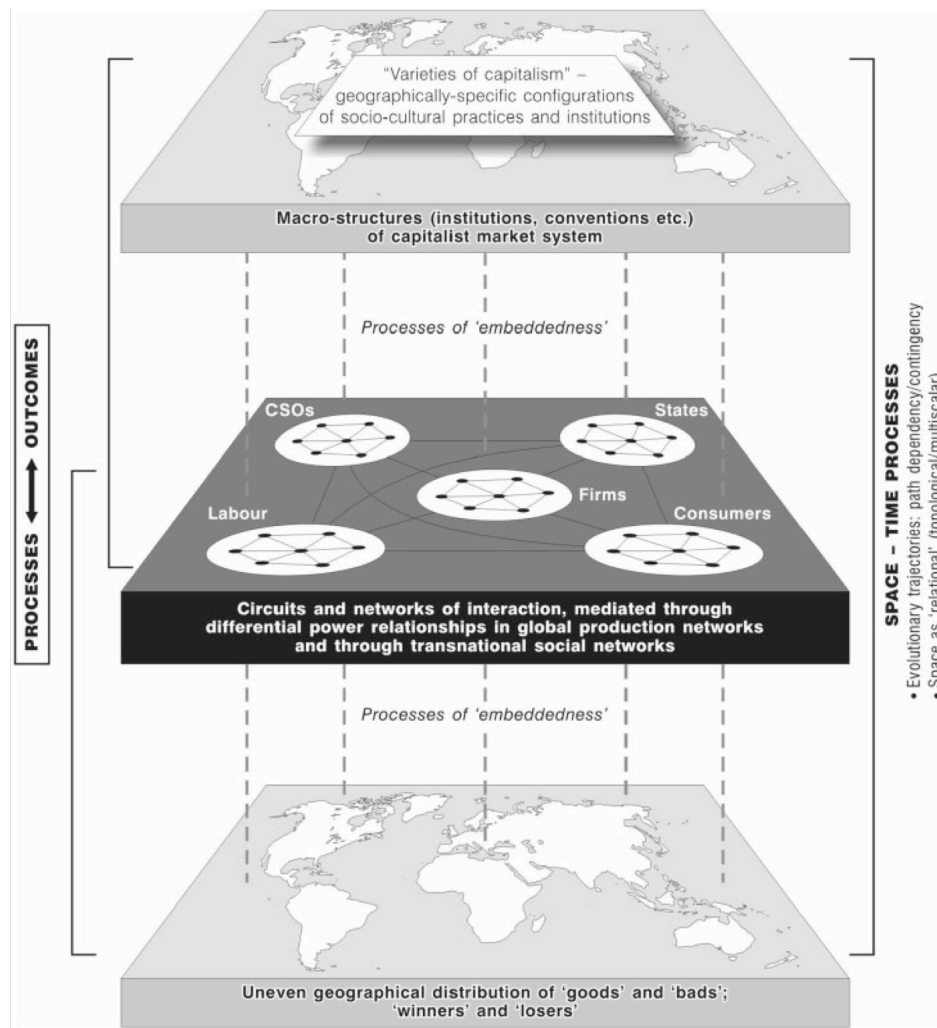


Figure 7: The embeddedness of a global production network. Source: (Coe, Dicken et al. 2008a:273)

### 4.3 Conclusions: Key questions for the empirical research

From chapters 2-4, I now derive a framework including some questions for the empirical research on corporate social responsibility in global production networks.

1. What **practices** are used to implement social standards? I analyse the practices along the lines of the framework presented in chapter 4.1, i.e., legislative, judicial, and executive regulation (→ Table 6).
2. How is the **credibility/legitimacy** of practices to implement standards framed and contested? What role do the aspects stakeholder participation/inclusion, transparency, accountability, and deliberation play in the arguments (→ Table 6)?
3. What limitations to the **effectiveness** of the CSR practices are contested (→ Table 6)?
4. What **causes** of poor working conditions do actors assume? I use the lens of the GPN (embeddedness, power, value) to identify the arguments different actors use to explain poor working conditions (→ Table 6). The causes are important to know because the CSR strategies used are to a large extent legitimized by referring to the assumed causes.

5. Under which **theoretical concepts** of CSR can the two case studies (FWF and BSCI) be subsumed? This question tries to apply the theoretical concepts that are presented in chapters 2.4 & 3.1.3 (shared responsibility, political CSR, positivist CSR) to the regulation practices of the two case studies (→ Table 6).

**Table 6: Main contested issues regarding voluntary regulation practices in global production networks and questions for empirical research**

Issue	Conceptual / theoretical aspect	How are CSR practices legitimized? Research questions
<b>(1) Causes of poor working conditions?</b>	Value (e.g. conditions of value creation, business case, transaction costs, skills)	<ul style="list-style-type: none"> <li>What causes of poor working conditions given relate to the concept of 'value'?</li> </ul>
	Embeddedness (e.g. competition, networks, trust, local knowledge)	<ul style="list-style-type: none"> <li>What causes of poor working conditions given relate to the concept of 'embeddedness'?</li> </ul>
	Power (e.g. purchasing power, collective power)	<ul style="list-style-type: none"> <li>What causes of poor working conditions given relate to the concept of 'power'?</li> </ul>
<b>(2) What CSR practices are used?</b>	Legislative regulation	<ul style="list-style-type: none"> <li>How do lead firms set rules? What rules are set?</li> </ul>
	Judicial regulation	<ul style="list-style-type: none"> <li>How do lead firms control the compliance with the social standards?</li> </ul>
	Executive regulation	<ul style="list-style-type: none"> <li>How does the lead firm facilitate the implementation of social standards?</li> </ul>
<b>(3) How are CSR practices contested as legitimate / credible?</b>	Legislative regulation	<ul style="list-style-type: none"> <li>How is participation/inclusion of stakeholders, transparency, and accountability contested?</li> <li>What other aspects are contested?</li> </ul>
	Judicial regulation	<ul style="list-style-type: none"> <li>How is participation/inclusion of stakeholders, transparency, and accountability contested?</li> <li>What other aspects are contested?</li> </ul>
	Executive regulation	<ul style="list-style-type: none"> <li>How are empowerments of workers and purchasing practices as 'good' CSR contested?</li> <li>What other aspects are contested?</li> </ul>
<b>(4) Limitations</b>		<ul style="list-style-type: none"> <li>How is the effectiveness of CSR practices contested?</li> <li>What are the limitations of the CSR practices?</li> <li>In how far does efficiency play a role?</li> </ul>
<b>(5) Theoretical concept of CSR</b>	Political CSR, Positivist CSR Shared responsibility	<ul style="list-style-type: none"> <li>What understanding of CSR is a CSR practice based on?</li> </ul>

# 5 Research methodology and methods

This chapter first presents the methodology on which the research is based. Then it explains how the empirical research was conducted.

## 5.1 Methodology: Understanding arguments, analysing discourses

In this research I use a qualitative research design that follows the ‘interpretative paradigm’ that is directed towards subjects. In contrast to quantitative social research that tries to *explain* social phenomena and to derive general laws, this approach tries to *understand* social phenomena by interpreting them (interpretativ-verstehendes Paradigma). It is based on the assumption that human actions and the resulting artefacts (e.g. documents) are the result of processes of interpretation and subjective attribution of meaning, and are not objectively given. Actors interpret and therefore construct social reality (Bläser 2005).

This does not mean that I view the whole world as socially constructed. I believe that there is also a concrete reality, e.g., that some workers in developing countries suffer from poor working conditions. However, I try to understand the struggles about working conditions through the subjective interpretations of particular actors, who construct a picture of issues like justice, responsibility etc.

Discourses play an important role in my research. Hence I analyse the question how social responsibility is defined and socially constructed by companies and private standards initiatives, and how NGOs contest these constructs (see for example: Hajer 2003).

## 5.2 Research design

The empirical research undertaken between 2006 and 2010 aimed at understanding the broader context of private regulation in global production networks and focuses on social standards.

### 5.2.1 Process of the empirical research

Empirical research was conducted in a very open and explorative way, and the data was evaluated in a circular, hermeneutic process by enhancing the pre-understanding of the research context (Flick 2000). There was no theoretical and empirical pre-determination; the main starting point of the empirical research was that there are conflicts between companies and NGOs regarding social and environmental issues in GPNs. Empirically, I mainly conducted expert interviews and collected organization reports and newspaper articles. I also had email and telephone contact with some key actors. I had three field

phases in India and Bangladesh, during which I conducted interviews and collected documents. Before and after these field-trips actors in Europe were interviewed:

- 2006 (1 month, India / Bangladesh): Broad approach in which the industrial sector to be researched was identified. At the beginning the focus sector was not fixed, and I discussed issues with actors in different industry sectors (shrimps, tea, clothing, leather)
- 2006-2007: Interviews in Germany / Netherlands
- 2007 (1 month, India / Bangladesh): Focus on the textile sector; interviews with various actors in New Delhi, Bangalore, Tirupur, Kolkata, Mumbai, Dhaka
- 2007 (5 months, India / Bangladesh): In-depth interviews with partly the same actors and partly other actors; I also had the opportunity to work from the office of a local NGO for 3 weeks
- 2007-2010: Interviews in Switzerland / Netherlands

### **5.2.2 Data collection**

The main data I used are interviews and written documents.

#### **Interviews**

148 expert interviews with key actors in Europe (Germany, Netherlands, Switzerland), Bangladesh (Dhaka) and India (New Delhi, Bangalore, Tirupur) were conducted for this research (→ Table 7). They helped to gain an overview and an overall understanding of my general research topic and to identify a broad spectrum of relevant issues and arguments. However, in order to analyse the way issues are presented, I only transcribed some of the interviews. I tried to select those that covered a broad spectrum of arguments. Additionally, not all interviews were taped. I took notes, which then could be used for the broader understanding.

Additionally, some of the interviewees I either interviewed twice or continued discussing their perspective on certain issues over the years. This way I got a deeper insight into their perspective instead of conducting an interview with another person that would yield similar issues.

#### ***Selection of interview partners***

After the first field trip I decided that I focus on social standards in the garment sector, and I selected my case studies, the BSCI and the FWF. I selected mainly well-known brands in Europe that are member either of the BSCI, the FLA or the FWF and interviewed them. Additionally, I selected some main actors representing the workers in Europe.

On my first visit to India and Bangladesh I identified some contacts that were well linked in the country. They recommended, whom I should speak to. Additionally, I used grey literature to identify and contact actors locally. I also applied the snowball principle. For contacts to the local civil society in India and Bangladesh, I additionally asked the CCC in Europe. Only few brands provided me with contacts to their suppliers. I further contacted about 50 suppliers that participated in an FLA meeting in New Delhi, of which

also only few answered. Most of the other suppliers were given to me by some interviewee.

### **Interviews with companies**

Most brands in Europe that I requested an interview from also granted an interview. Triumph International declined an interview with one MA student, saying they felt wrongly quoted by others. From the BSCI members, Esprit, *Aldi*, *Lidl* and various importers for *Aldi* and *Lidl* did not grant an interview. From the FWF, Mexx and some other companies never replied my requests, and the FWF did not provide me with contacts of their member companies, arguing that this was confidential business information. For confidentiality reasons, I only use abbreviations that refer to the general group of actors. These are set together by a letter and a number, e.g., B2, A5.<sup>29</sup>

**Table 7: Interviews conducted between 2006 and 2010**

		All	Germany /CH /NL	India	Bangladesh
Buyers (companies or agents)	(B)	36	9/13	7	7
Producers	(S)	27		22	5
Civil society organizations	(N)	42	2/3/3	22	12
Auditors / consultants	(A)	15	1	10	5
Government agencies / donors	(G)	13	1	5	7
Others		15			

### **Documents**

Documents were used because they portray the official arguments. The following documents were analysed in addition to the interviews:

- For the analysis of the arguments by BSCI and FWF, I used policy documents, annual reports, newsletters and the websites.
- For the analysis of the arguments by companies, I used CSR reports and websites of the companies and the organizations.
- For the analysis of the arguments by the CCC, I used policy and campaign material of the more recent campaigns, urgent actions, press documents, newsletters and websites.
- For the analysis of the struggles on the wages in Bangladesh, I analysed around 100 online newspaper articles from the largest English daily newspaper in Bangladesh, 'The Daily Star' (abbreviated as TDS)<sup>30</sup>. They document and comment the situation in Bangladesh mainly between May and October 2006.

The documents are quoted like normal publications and websites are usually quoted in

<sup>29</sup> The number refers to my internal numbering system.

<sup>30</sup> 'The Daily Star' is the largest circulating daily English newspaper in Bangladesh. The following issues were analysed: TDS713, 717, 724, 729, 758, 764, 806, 807, 815, 817, 818, 819, 820, 834

footnotes.

### 5.2.3 Data evaluation

I experimented with various ways of coding the data, some with very detailed codes and others with less detailed codes. Eventually, it was best to first deductively code the data according to the three regulation practices (legislative, judicial, executive regulation) plus a category 'other'.

- **Legislative regulation** includes everything regarding the setting of the standards, but also the standards themselves, for instance: What are the most relevant problems of the workers? Which standards shall be set? Which standards are set? Why are particular standards set and not others? How are standards and rules for implementing and controlling the standards set? Who participates? How transparent is the setting? Is it credible? How could it be made more legitimate?
- **Judicial regulation** includes everything regarding the control of the standards, for instance: How do we know that a factory follows the standard? Who controls this? Who should do this? How should it be done? Is the control credible and legitimate? Is the control effective? Who should pay? How far should a brand control standards?
- **Executive regulation** includes questions regarding the implementation of standards, such as: What are the main problems regarding the implementation? What is needed to make implementation more effective? How to empower workers? How is the supply chain governed?

This way of coding helped me break down and reduce my material. It made sense as most information regarding the corporate responsibility for working conditions in the value chains usually touches at least one of the three issues. My interviews were very open, but usually structured along the line of the three practices. Furthermore, the discussion about corporate responsibility can hardly be done in a very abstract sense, but needs to be connected with concrete practices.

Regarding each of the three topics, I then inductively coded the material into storylines and arguments. Doing this, I was led by theoretical concepts from the analytical framework, i.e. power, embeddedness (trust), value, participation, and by concepts referring to the legitimacy/credibility of private regulation, such as participation, accountability, transparency (→ compare chapters 2, 3, 4). I was also led by the more general knowledge that I had gained during the research. I successively used the empirical material to enhance the arguments.

### 5.2.4 Data use in the empirical chapters

As the main aim of this research is to analyse what position different actors have on corporate responsibility and what arguments they use to legitimize or delegitimize it, I use documents published by the actors in the same way as I use interviews. Both are referred to as evidence to show how actors argue, and to illustrate in their own words how they see issues. Interviews remain in the original language, since they have an illustrative function and would often lose their meaning in a translation. It should also be possible to

understand the text without reading the quotes, as the main arguments are subsumed in the text. When I use ‘..’ in quotes, this means that the interviewee stopped, ‘...’ means that I dropped lines from the quote.

### 5.2.5 Triangulation

I triangulated (Flick 2000:38f) my data by using interviews and documents and by connecting different methods. In addition, in some of the interviews I used an approach Korf (2004:40) calls a “Habermasian concept of inquiry”. This approach is based on an ideal speech situation as a regulative notion, as Korf explains:

*We are making claims of validity and are also expected to meet such claims when they are questioned. The participants of a discourse use their shared experiences (made in their life-world or specific field of study) as background and reservoir to test the validity of arguments. I would argue for a kind of empirical inquiry where researchers normatively aspire to come close to an ideal speech situation where both, researchers and practitioners, share knowledge and sort out more appropriate explanations from less appropriate ones through discourse. Through intensive, ‘ideal’ (non-hierarchical) discourse, teams of researchers and practitioners may be able to develop common understandings and distinguish what is from what seems to be and from what ought to be. (Korf 2004:40)*

To triangulate I combined my own interpretation of interviews and documents with the following approaches to inquiry:

- Starting in 2008, I worked on an action-oriented research project with the CCC in Switzerland (Erklärung von Bern). The aim of the project was to conduct a ranking of companies including company profiles. Based on questionnaires that were sent out to different firms the year before, we developed a standardized questionnaire that was sent to 30 outdoor brands. The results were entered into a database, which (according to some pre-determined rules that were discussed in the CCC network) generated company profiles evaluating the company from the CCC perspective. In the project we intensely discussed criteria of the ranking, which allowed me to substantiate and triangulate my interpretation of the view on corporate responsibility that I had gained from interviews and documents. However, due to confidentiality reasons I did not integrate any statements from the company answers.
- In 2008, I compared the BSCI and the FWF on request of the FWF for internal use, but it was a very concise summary of chapter 7. This provided me with feedback from their perspective.
- In 2009, I participated in a workshop by the International Secretariat of the CCC in Amsterdam, where I presented some results of my analysis and participated in the discussion about the CCC strategy regarding the BSCI and FWF.
- In 2009 and 2010, I consulted a Swiss fashion company regarding their CSR approach to social standards that allowed an in-depth insight into one particular company. This consultation was combined with an MA research on the companies’ CSR strategy.
- In 2008 and 2009, I conducted a research project with students in which we analysed the CSR strategies of Small and Medium Swiss fashion labels (Starmanns 2009). We interviewed 12 companies and conducted a workshop.



- I shared some empirical chapters with the FWF, the BSCI, the CCC and local NGOs in India and Bangladesh in order to get their feedback.
- In 2010, I participated in a multi-stakeholder meeting in Utrecht hosted by the Fair Labelling Organization (FLA) that aimed at developing a fair trade standard for textiles. This two-day meeting aimed at identifying strategies to best assure social standards.
- I supervised one MA thesis that analysed CSR in the context of the 2008 'fair fashion' ranking of the EvB.

The feedback I got from practitioners allowed me to better understand their arguments and to revise my own arguments. This method of inquiry helped me to critically reflect the complex issues of the research, to substantiate my arguments and to triangulate my findings.

### **5.3 Limitations of the empirical research design**

This work is not looking for something like 'truth' or 'facts' in CSR or private regulation, even if I present some recommendations. The research does not reflect actual CSR *practices*, but only the way how different actors *talk* about them and what arguments they provide – what I here understand as 'discourses'. I also understand the rules of private standards initiatives as a (codified) element of the discourse about CSR. However, the rules do not allow me to know whether they are really followed upon in practice. But also what companies, NGOs or other actors say does not allow me to understand whether rules reflect the actual practices.

The research has some limitations:

- Very generally, the research rather represents the views of more progressive companies, who care more about standards than many others. This produces somehow biased results. However, whereas less progressive companies do not disclose information and were not available for an interview, many of the more proactive BSCI and FWF members were open for an interview.
- The producers I interviewed in India and Bangladesh were usually not supplying companies that I interviewed in Germany and Switzerland. In general, it was hardly possible to identify factories that supplied to a BSCI or FWF member. The reason behind this is that membership in the BSCI/FWF in the years 2006 and 2007 was still quite low, and since the brands did not disclose their producers it was rather coincidental if a producer I interviewed was supplying a member.
- In India and Bangladesh it was rather difficult to get information about the FWF or the BSCI approach and how it was implemented on the ground, because only few interviewees distinguished between different private standards initiatives, whereas most talked more generally about the problems. Many suppliers and civil society actors in India and Bangladesh were not really aware of the differences regarding the initiatives; some even described the facts totally wrong. This, however, still allowed me to identify the more general discourses and arguments.

- I did not conduct any interviews with workers, mainly because my interest is how NGOs (as self-declared worker representatives) frame the issues. In addition, gender and power relation between me and the mostly female workers in a South Asian culture would have been problematic and I lacked the financial means to employ research assistants. One factory manager allowed me to interview workers from his factory, and the situation was obvious that the workers only told what the manager wanted to hear.
- The research focuses on English speaking actors and so it might neglect those not speaking English, e.g., local trade unions. Important struggles with regard to my question are conducted on the international level between actors that can engage internationally. However, this way my research may neglect the voice of some poorest of the poorest that do not speak English.
- To reduce complexity and to focus on the struggles between worker representative and company representatives (where I did differentiate), I regard the CCC as a relatively homogenous bloc. Even though the interaction particularly with the Swiss representative of the CCC showed me that there are naturally quite different opinions within the network of the CCC, the CCC agrees on one position to be represented in the public discourses. Analysing the differences in opinions in the CCC, however, would be a different research. Similarly, I regard BSCI members and FWF and members as rather homogeneous blocs, even though this reduces the complexity of reality.

# 6 The Clean Clothes Campaign

The *Clean Clothes Campaign* (CCC) is the most influential ethical anti-sweatshop campaign in Europe. The empirical material in chapters 8-10 focuses on the arguments by organizations from this network. To better understand in what strategies the arguments are embedded, I present the CCC network including its aims and principles (→ CH 6.1), its strategies (→ CH 6.2), and some more recent ethical campaigning examples of the CCC national platforms in Germany and Switzerland (→ CH 6.3).

## 6.1 The Clean Clothes Campaign network, aims and principles

The CCC is a network that aims at improving working conditions in the global garment and sportswear industry and at ending ‘exploitative’ work. It tries to move companies and governments to respect minimum standards derived from various ILO conventions and the Universal Declaration of Human Rights (Sluiter 2009)<sup>31</sup>. The CCC defines its aims the following way:

*The Clean Clothes Campaign is dedicated to improving working conditions and supporting the empowerment of workers in the global garment and sportswear industries. Since 1989, the CCC has worked to help ensure that the fundamental rights of workers are respected. We educate and mobilise consumers, lobby companies and governments, and offer direct solidarity support to workers as they fight for their rights and demand better working conditions.*<sup>32</sup>

The International Secretariat of the CCC in Amsterdam coordinates international activities and campaigns, facilitates the development of strategy and policy, facilitates the international campaign structures and communication, publishes relevant information, and trains the network. Strategies are drafted within the network. Furthermore, there is frequent bilateral consultation with international partners on the basis of concrete cases (urgent appeals and joint campaigns). The Secretariat is relatively small. It has around 8 full time equivalents working on the three issues: (1) Urgent Appeals, (2) Campaigns, (3) The CCC-network. Table 8 shows that press releases in the last decade focused on larger discounters, brands and sports companies.

The International Secretariat is connected to the European CCC coalitions in 14 countries with more than 250 organizations, and additionally more than 200 organizations from the partner network in the production countries. 2008 it was financed 54% by the Dutch government, 23% by the EU and 21% private funds. The budget was around 550.000 Euro (CCC 2009a).

Instead of listing violations against working conditions criticized by the CCC, I rather present the principles of the CCC, which indicate what the network regards as important. It also mirrors what labour rights violations are regarded as most problematic. The most fundamental principle of the CCC is the following:

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<sup>31</sup> [www.cleanclothes.org](http://www.cleanclothes.org) (31.3.2010)

<sup>32</sup> [www.cleanclothes.org](http://www.cleanclothes.org) (31.3.2010)

*All workers ... have a right to good and safe working conditions, where they can exercise their fundamental rights to associate freely and bargain collectively, and earn a living wage, which allows them to live in dignity.*

In summary, the other principles (→ compare Box 2) address that workers have a right to a good and safe working standard and to know their rights. They should also be consulted and empowered and take the lead regarding empowerment. Gender issues are seen as relevant. Furthermore, the public has a right to know where products are made, and should take action, but not through boycotts. Finally, national governments have a duty to make legislation binding and implement it. Based on these principles and the ILO core norms the CCC developed a model code.

**Table 8: CCC International press releases issued along with campaigns since 2000 focussing on particular brands in their headline**

Press release(s) regarding issue	Target companies	Year
Olympia	Sports companies	2010
Triumph	Triumph	2009
Asian Floor Wages	All companies	2009
'Cashing in' Retailers / Discounters	Large retailers / discounters	2009
Retailers	Large retailers	2008
Fair Play 2008: Large sports brands	Sports brands	2008
Fair Play at Olympics	Sports brands	2005
Sports Industry	Sports brands	2004
Tom Tailor	Tom Tailor	2003
Informal Sector	All companies	2002
FIFA	Sports brands	2002
Olympics	Sports brands	2000
Euro 2000 'Stitched up'	Sports brands	2000

Source: [www.cleanclothes.org/campaigns-list](http://www.cleanclothes.org/campaigns-list), 12.1.2010

Each row can represent several press releases.

#### **Box 2: The Clean Clothes Campaign principles**

The work of the CCC is founded upon the following principles:

- All workers – regardless of sex, age, country of origin, legal status, employment status or location, or any other basis – have a right to good and safe working conditions, where they can exercise their fundamental rights to associate freely and bargain collectively, and earn a living wage, which allows them to live in dignity.
- Minimum standards related to these rights are derived from the ILO conventions, the ILO Declaration on Fundamental Principles and Rights at Work adopted in 1998, as well as on the Article 23 of the Universal Declaration on Human Rights and have been listed in the CCC model code of labour practices for the garment and sportswear industry. These rights apply to all workers, even if they or their workplaces are not formally recognised as such.
- Workers have a right to know about their rights (under national and international law and agreements, as well as under voluntary initiatives and agreements). They are entitled to education and training in relation to these rights.
- The public has a right to know where and how their garments and sports shoes are produced.
- Workers themselves can and should take the lead in their own organising and empowerment.
- Workers can best assess their needs and the risks they take when asserting their rights. Public campaigns and other initiatives to take action in cases of rights violations and the development of strategies to address these issues must be done in consultation with workers or their representatives.
- The public can and should take action to see that workers' rights are respected. However, the CCC does not generally endorse or promote boycotts as a tool for action.
- In order to achieve and maintain workers' rights, the gender issues underlying or facilitating rights violations must be addressed.

- National governments and international authorities have an obligation to implement legislation and sanction any failure to do so. Binding legislation should exist that meets the standards set out in ILO conventions. They also should implement ethical procurement policies.

Source: [www.cleanclothes.org](http://www.cleanclothes.org) (31.3.2010), CCC Annual report 2008

## 6.2 Strategies of the CCC

Central to the CCC is that it operates as a network in which the single members believe in the same fundamental principles and follow the same aims regarding the workers (→ Box 2) (Hale 2000; Hale & Shaw 2001; Micheletti & Stolle 2007). However, each single member of the network is situated in a different national context and develops its own strategies. The European CCC coalitions mainly work on raising the awareness of consumers, governments, brands/retailers and moving the different actors to take responsibility mainly through campaigns and media work.

The groups that form the partner network in the production countries are in contact with workers and conduct research on the local situation, i.e., they mainly inform the European network about labour rights abuses in factories supplying European or US American brands and retailers. The work of both parts of the network is connected: the European groups use the information collected by the organizations in the production countries as an input for the work of the campaigns against the brands and retailers in their own countries. Thus, most studies the CCC network publishes are based on research by the local partner groups. They are usually written and/or edited by one group from the European network, sometimes together with partner groups from the production country. For instance, the lawsuit against *Lidl* is based on the research of a local partner organization in Bangladesh and its contacts with the workers, but the editor is a member of the German CCC network (Burckhardt 2010).

The CCC network follows four main strategies (CCC 2009a):

- **Pressing companies to assume responsibility** and to ensure that garments are produced under good labour conditions.
- **Supporting workers, labour unions** and corporate organisations in the producing countries.
- **Urging citizens to use their power as consumers.** This is done through increasing consumer awareness by providing accurate information about working conditions in the garment and sporting goods industry.
- **Making use of existing legal opportunities** to improve labour conditions and to lobby for additional legislation that contributes to good labour conditions. The government is addressed in its role as legislator and in its role as consumer. CCC advocates ethical procurements policies for governments.

## 6.3 CCC in Europe: Two country examples

As the national context in Germany and in Switzerland is very different, I briefly show what the two national networks in Germany and Switzerland were focusing on in the last

few years. This is exemplary and shall only give a rough impression.

### 6.3.1 Germany

The CCC in Germany is a network of 20 organizations. It has one secretariat, where one person is working. The German national CCC network focuses on the following issues: campaigns during large sports events, large German brands (e.g. *Adidas*, *Puma*), retailers (e.g. *KarstadtQuelle*, *Tchibo*), discounters (e.g. *Lidl*, *KiK*, *Aldi*), public procurement, research about working conditions in supply factories, urgent actions, training of trade unions and womens' organizations in Asia and Eastern Europe. In 2010 the CCC in Germany has working groups on discounters, sport companies and public procurement. In 2005, it conducted a pilot project with *Hess Natur*, which eventually led to *Hess Natur* becoming a member in the *Fair Wear Foundation*.

One recent example of the work of the German CCC is the lawsuit against *Lidl*, which is based on the work on discounters that the CCC has been undertaking for a long time. In 2010 the CCC in Germany supported the *Verbraucherzentrale Hamburg e.V.* to file a lawsuit against the German discounter *Lidl*. The company was sued for "unfair competition" due to misleading advertising and deceiving customers (→ CH 1 & Box 3).

#### Box 3: Lawsuit against *Lidl*

On April 7, the *Verbraucherzentrale Hamburg e.V.* filed a lawsuit against *Lidl* with damages of 250.000 Euro if the company continues to advertise its own responsible behaviour the way it has been doing while the suppliers in developing countries still violate the codes that are set in the BSCI.

The lawsuit against *Lidl* has two formal requests demanding that *Lidl* must be forbidden to advertise its corporate responsibility the following way as long as there are still major labour rights violations in the factories:

- refer on the website to the membership in the BSCI and to claim that as a member of the BSCI *Lidl* champions for good working conditions and this way contributes largely to sustainably improve working conditions in the supply chains
- refer on advertising leaflets to its membership in the BSCI and to claim "We act fair! ... We only give orders to selected suppliers and producers, who can prove that they actively take social responsibility. ... we sustainably secure these standards.

The original quotes read as follows:

1.1. auf ihrer Internetseite auf die Mitgliedschaft bei dem Europäischen Programm für Sozialstandards (BSCI) hinzuweisen und zu behaupten, „als BSCI-Mitglied setzt sich Lidl für sozialverträgliche Produktionsbedingungen ein. Auf diese Weise leistet Lidl einen großen Beitrag zur nachhaltigen Verbesserung der Arbeitsbedingungen in der weltweiten Lieferkette, vor allem in Entwicklungs- und Schwellenländern“ wie aus Anlage K 2 ersichtlich,

1.2. in Werbeprospekten auf die Mitgliedschaft bei dem Europäischen Programm für Sozialstandards hinzuweisen und zu behaupten „Wir handeln fair! Jedes Produkt hat eine Geschichte. Uns ist wichtig, wer sie schreibt. Lidl setzt sich weltweit für faire Arbeitsbedingungen ein. Wir bei Lidl vergeben deshalb unsere Non-Food-Aufträge nur an ausgewählte Lieferanten und Produzenten, die bereit sind und nachweisen können, soziale Verantwortung aktiv zu übernehmen. Wir lehnen grundsätzlich jegliche Form von Kinderarbeit oder Menschen- und Arbeitsrechtsverletzungen in den Produktionsstätten unserer Waren ab. Wir sichern diese Standards nachhaltig“ wie aus Anlage K 3 ersichtlich,

wenn in Zulieferbetrieben aus Entwicklungs- und Schwellenländern, die für die Beklagte fertigen, gegen die im Katalog des BSCI festgelegten, und den ILO-Konventionen entsprechenden, Mindeststandards betreffend Arbeitszeit, Löhne, Diskriminierung, Versammlungsfreiheit und das Recht auf Kollektivverhandlungen verstoßen wird indem

The core of the complaint is that *Lidl's* advertising makes consumers believe that good working standards in the supply factories are secured and that membership in the BSCI guarantees that suppliers comply with social standards. This way of advertising, the complaint argues, deceives the customers. It presents evidence that was researched by a partner member of the CCC in Bangladesh showing this and how in four factories in Bangladesh that are supplying *Lidl* the working standards are violated.

Those supporting the complaint argue:

- "Es besteht ein krasser Widerspruch zwischen der öffentlichen Darstellung Lidls und den tatsächlichen Verhältnissen in den Produktionsstätten der Lieferanten." (Miriam Saage-Maaß, ECCHR)

- *“Lidl betreibt Schönfärberei. Mit dem BSCI-Kodex hängt sich der Discounter ein Sozialmäntelchen um, aber die Lage der Arbeiterinnen verbessert sich nicht.” (Gisela Burckhardt, CCC)*
- *“Lidl täuscht die Verbraucher. Auf unsere Abmahnung wollte Lidl die Werbung nicht zurückziehen. Daher haben wir jetzt Klage eingereicht.” (Günter Hörmann, Verbraucherzentrale Hamburg).*

On April 14, Lidl proposed an out of court settlement that committed them to a cease and desist agreement on claims of global fair working conditions in its advertisements. “As part of this, Lidl is no longer allowed to refer to their membership of the Business Social Compliance Initiative (BSCI) in their advertising brochures.”<sup>33</sup>

### 6.3.2 Switzerland

The CCC in Switzerland is supported by 19 organizations, and its main coordinating staff is one person at the NGO *Erklärung von Bern* (EvB). In contrast to the network in Germany, only one person working at the EvB is active, whereas the other organizations mainly support the work with their name. The CCC in Switzerland puts pressure on companies mainly by informing the consumers about working conditions in the producing countries. Between 2007 and 2010 it focused very much on the following issues:

- Pressing companies to assume responsibility by publishing firm rankings and collecting consumer signatures;
- Supporting Triumph employees to confront the company, e.g., by issuing a case against Triumph at the OECD (→ Box 4).
- Urging citizens to use their power as consumers by publishing firm rankings, collecting consumer signatures and producing a ‘fair’ organic cotton T-Shirt and telling the story of the whole production.

Another focus has been to inform consumers about the different approaches companies in Switzerland take and to provide them with a platform they can use to protest against certain companies, for instance, by writing protest emails. In addition, it demands that companies sign and implement a code of conduct and have it controlled independently. It clearly states that it wants companies to become member in the Fair Wear Foundation (FWF):

*Unabhängige Kontrolle: Gemeinsam mit Nicht-Regierungsorganisationen (NGO) und Gewerkschaften wird die Einhaltung des Kodex überprüft. Dadurch sollen die Beteiligung der Beschäftigten, die Transparenz über die erfolgten Massnahmen und die erzielten Resultate gewährleistet werden. Die Fair Wear Foundation wird von der CCC als Verifizierungsstelle favorisiert, das diese den Verifizierungsansatz heute am umfassendsten betreibt.*<sup>34</sup>

In the years 2004, 2006, and 2008, the CCC published rankings of Swiss and international fashion companies, and in 2009 of outdoor companies. The main demands towards the companies were to set up a Code of Conduct and implement it, to join a multi-stakeholder initiative and interact with civil society, to promote freedom of association and the right to collective bargaining in supply chains, and to promote small farmers by buying organic or fair trade cotton.<sup>35</sup> As a reaction to the outdoor ranking the European Outdoor Group set up a social standards group in its ‘sustainability working group’ and various companies that participated in the survey have shown their interest in

<sup>33</sup> <http://www.cleanclothes.org/media-inquiries/press-releases/german-retailer-lidl-retracts-false-claims-of-fair-working-conditions>, 2.5.2010

<sup>34</sup> <http://www.evb.ch/p13939.html>, 3.4.2010

<sup>35</sup> <http://www.evb.ch/p16034.html>, 3.4.2010

joining the FWF.<sup>36</sup>

## Schweizer KMU-Firmen

Noten: 1= sehr gut, 3=ungenügend

### Gipfelstürmer

diese Firmen haben einen Panoramablick und setzen sich für faire Arbeitsbedingungen ein.

Leider beweist keine Outdoorfirma genug Transparenz und Verantwortung für die Lieferkette, um die C-Kategorie zu erreichen.

### Mitläufer

diese Firmen sind auf dem Weg, haben den Gipfel aber noch lange nicht erreicht.

#### ► Bewertungskriterien

	Transparenz	Kodex	Umsetzung	Überwachung	Material	Durchschnitt
Bergspitz	2	3	2	3	2	2.4
Sherpa Outdoor	2	2	2	3	3	2.4

### Ignoranten

diese Firmen haben noch nicht einmal bemerkt, dass sie sich auf den Weg machen sollten.

#### ► Bewertungskriterien

	Transparenz	Kodex	Umsetzung	Überwachung	Material	Durchschnitt
Outlyne	2	3	3	3	2	2.6
Zimtstern	3	1	3	3	3	2.6
Mc Pearson	2	3	3	3	3	2.8
R'ADYS	2	3	3	3	3	2.8
Belowzero	3	3	3	3	3	3
Careshop	3	3	3	3	3	3
LK International	3	3	3	3	3	3
Mountain Force	3	3	3	3	3	3
Rukka	3	3	3	3	3	3
Snowlife	3	3	3	3	3	3
WS Textil / Jeantex	3	3	3	3	3	3

## Internationale Outdoorfirmen

Noten: 1= sehr gut, 3=ungenügend

### Gipfelstürmer

diese Firmen haben einen Panoramablick und setzen sich für faire Arbeitsbedingungen ein.

Leider beweist keine Outdoorfirma genug Transparenz und Verantwortung für die Lieferkette, um die C-Kategorie zu erreichen.

### Mitläufer

diese Firmen sind auf dem Weg, haben den Gipfel aber noch lange nicht erreicht.

#### ► Bewertungskriterien

	Transparenz	Kodex	Umsetzung	Überwachung	Material	Durchschnitt
Mammut	2	1	2	1	2	1.6
Patagonia	2	2	2	1	1	1.6
Odlo	2	1	2	1	3	1.8
Helly Hansen	2	2	2	2	2	2
Haglöfs	2	2	2	3	2	2.2
Jack Wolfskin	2	2	2	3	3	2.4

### Ignoranten

diese Firmen haben noch nicht einmal bemerkt, dass sie sich auf den Weg machen sollten.

#### ► Bewertungskriterien

	Transparenz	Kodex	Umsetzung	Überwachung	Material	Durchschnitt
Vaude	2	2	3	3	3*	2.6
Black Diamond Europe**	3	2	3	3	3	2.8
Columbia Sportwear	3	2	3	3	3	2.8
Fjällräven	3	2	3	3	3	2.8
Marmot	3	2	3	3	3	2.8
The North Face	3	2	3	3	3	2.8
Descente	3	3	3	3	3	3
Salewa	3	3	3	3	3	3
Schöffel	3	3	3	3	3	3
Tatonka	3	3	3	3	3	3

Figure 8: Evaluation of Swiss and international outdoor companies by the EvB in 2009 ([www.evb.ch](http://www.evb.ch), 2.3.2010)

#### Box 4: Urgent action against Triumph International

The CCC International Secretariat and the national section of the CCC in Switzerland have been making labour rights abuses at factories supplying to the lingerie brand *Triumph International* public for many years and calling consumers to participate in urgent actions. Triumph is one of the largest brands in Europe with an annual turnover of more than 2 billion Euro. In 2008 and 2009 the CCC called for altogether six urgent action appeals, particularly regarding the dismissal of union leaders at a factory in Thailand. The protests started when the factory dismissed the leader of the union for wearing a T-Shirt with the print: "Those who do not stand are not criminals. Thinking differently is not a crime." In 2009 Triumph closed down factories in Thailand and the Philippines, declaring that the dismissals of more than 3000 workers were due to the recession. On July 24, 2009 over a thousand workers in Bangkok who were to be laid off by a subsidiary of *Triumph International, Body Fashion* (Thailand) Ltd, marched to the Embassy of Switzerland (see picture below).

Already 2001 the CCC UK ran a campaign to boycott *Triumph* to move out of Burma (see picture below).

So far, *Triumph* has set up a code of conduct, but has not joined a multi-stakeholder initiative and has not reinstated the workers.

In December 2009 the CCC asked supporters to write the following Urgent action Email to Triumph

Dear Mr. Spiesshofer

Christmas time is family time. In Thailand and the Philippines *Triumph* has a 'special christmas gift' for 3660 workers and their families: they were fired, lost their regular income and face an uncertain future, in which they don't have sufficient money to send their children to school.

In its annual report *Triumph* announced that its Asian subsidiaries did well, notwithstanding the economic crisis. Meanwhile *Triumph* ordered massive layoffs in exactly those Thai and Philippine factories, where unions have been strongest and most successful in defending workers' rights. In this process Triumph failed to truly engage in negotiations with the unions and therefore violated internationally recognised labour standards.

Mr. Spiesshofer, you as the CEO and owner of *Triumph International* have to take responsibility: unconditionally reinstate the workers and engage in direct negotiations with the unions!

Best regards,

<sup>36</sup> Personal communication





## 7 Private regulation initiatives: Two case studies ‘BSCI’ / ‘FWF’

This chapter presents two different private standard initiatives (PSI), which represent the two case studies of this research, namely the *Fair Wear Foundation* (FWF) and the *Business Social Compliance Initiative* (BSCI). Both initiatives aim at helping companies to implement social standards into their supply chains, and in a larger context both aim to improve working conditions in factories worldwide. And both say that their members take responsibility and that their approach is credible and legitimate. However, the two initiatives follow very different approaches, and these differences are the focal points in the struggles for defining and discharging corporate responsibility.

Each initiative has elaborated a different set of rules that define the members’ responsibility for implementing social standards into their supply chains and their required practices. According to the analytic framework (→ CH 4) the rules define the following aspects:

- Rules for legislative regulation – i.e., who sets the rules, particularly the social standards and rules regarding the members’ responsibility and the initiatives’ transparency (→ CH 7.2);
- Rules for judicial regulation – i.e., how the implementation of the social standards are audited (→ CH 7.3);
- Rules for executive regulation – i.e., how are standards implemented and which tools does the PSI use to ensure that standards are met (e.g. incentives / sanctions) (→ CH 7.4).

In this chapter I first briefly present some backgrounds of both initiatives (→ CH 7.1) and then the rules regarding legislative, judicial and executive regulation of the two case studies BSCI and FWF in order to highlight similarities and the major differences of these rules. Later, in chapters 8-10, I analyse how the major differences in the rules are contested between various actors along the global production network, i.e. how different approaches to private regulation are legitimized and criticized.

### 7.1 Background: History, membership, financing

#### 7.1.1 History

One of the founding pillars of the corporate-driven **Business Social Compliance Initiative** (BSCI) is the ‘AVE-Sektorenmodell Sozialverantwortung’, which is an initiative by the Foreign Trade Association of German Retailers (AVE)<sup>37</sup>. The ‘AVE-

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<sup>37</sup> Aussenhandelsvereinigung des Deutschen Einzelhandels e.V. (AVE)

Sektorenmodell' was implemented through a public-private partnership project between the AVE and the GTZ between 2003 and 2006 (Koepe 2007) and developed to harmonize various corporate responsibility approaches.<sup>38</sup> The Brussels-based *Foreign Trade Association* (FTA)<sup>39</sup> established a common platform for the various European codes of conduct and monitoring approaches, and developed the BSCI as a common monitoring system for social compliance of European companies (BSCI 2009:1). The aim was to harmonize corporate social responsibility approaches at a European level, to increase the overall impacts and to be more efficient. The BSCI was founded in 2003 and operates from the FTA offices in Brussels. In 2009 the BSCI established representatives in China and in India to increase its presence on these important markets.

The **Fair Wear Foundation** (FWF) was initiated in the Netherlands by the CCC, and a confederation of Dutch trade unions (FNV) in cooperation with a Dutch Business Association in the 1990s as a more positive approach to change corporate responsibility behaviour in contrast to the 'naming and shaming' done by labour rights campaigns (FWF 2008e):

*The idea was after campaigning, more or less, naming and shaming kind of campaigns in the beginning against the corporate culprits. So a more positive approach was needed. And there seemed to be room also to organise something more in cooperation with companies. So we started this negotiation process, with employers associations and trade unions and NGOs in a quite open way, actually. That must have been 1994, something, so it was still at the very beginning - the whole word multi-stakeholder had not yet been invented, I guess, at the time - it took a very very long time to negotiate this, because what they started was to really negotiate on the charter. And it turned out to become an organization. (FWF 2008d:1)*

In addition, the CCC and FNV both criticise the bad working situations in supply factories in producing countries, and regard the FWF as a more credible and effective approach than the one of the BSCI. The Foundation became operational in 2001, starting with a pilot study and finally presented itself to the public in 2003, when it started recruiting new members (FWF 2008e). Based in Amsterdam, the FWF started to focus on the Dutch market. Today, it has members in seven European countries and regards itself as a European initiative. In 2007 it established an office in Switzerland and merged with the initiative ISCOM (International Social Compliance Verification), which is run by three Swiss NGOs, namely *Brot für alle*, *Fastenopfer* and *Max Havelaar-Stiftung* (Schweiz) (FWF 2008d:27)<sup>40</sup>.

### 7.1.2 Members and membership

Many German or Swiss companies that are sourcing garments from a so-called 'risk-

<sup>38</sup> [http://www.ave-koeln.de/csr/ave\\_sektorenmodell\\_1.htm](http://www.ave-koeln.de/csr/ave_sektorenmodell_1.htm) (1.2.2010); Monitoring von Sozialstandards – AVE-Sektorenmodell auf Konsolidierungskurs, without date, [www.ave-koeln.de/doc/doc/AVEMeinungenSozialstandards.pdf](http://www.ave-koeln.de/doc/doc/AVEMeinungenSozialstandards.pdf) (1.2.2010)

<sup>39</sup> The FTA ... is committed to achieving its goal of a true free trade environment and it focuses especially on trade policy, quantitative restrictions, tariffs, anti-dumping proceedings and other trade barriers. For 30 years, it has supported its members, consisting of national trade associations and companies from all over Europe, by providing expertise and up-to-date information and by campaigning on their behalf against protectionist measures in the European and international arena. (BSCI 2007a:4)

<sup>40</sup> We have never tried to get foreign members. Now we are trying. Now we are setting up a structure where that could take place. There are a few German candidates, too. But for them, of course, the problem is that FWF is still very much a Dutch organisation. So we have to get more open to that. But at the beginning it was never our attempt to directly try to have international or foreign firms as a member.

country'<sup>41</sup> become a member in one of the two initiatives. Garment brands and retailers can also join both initiatives, use the BSCI for monitoring purposes and the FWF for verification purposes. However, so far, only one of the BSCI members has additionally joined the FWF, and realistically seen, the two initiatives are competing for new members.

New members increase the power an initiative has in the market. The more members an initiative has, the more attractive it becomes to companies that have not yet joined an initiative. With more suppliers following a single system there is greater chance of overlap in suppliers, which reduces audit costs. A relevant difference between the BSCI and the FWF is that the latter only accepts companies that import or sell sewed products (mainly garments), whereas the BSCI accepts companies that import or sell all kinds of consumer goods, including agricultural products<sup>42</sup>.

There are vast differences in terms of the amount of workers that are under the regulation of each initiative. The BSCI focuses on retailers, and therefore automatically has members with a large turnover and many suppliers. The largest member in the BSCI is the *Metro Group*, which had a turnover of 68 Billion Euros in 2008. The BSCI members initiated almost 5.000 factory audits and re-audits in 2008. In contrast, the FWF focuses on small and medium sized companies, who usually have a much smaller number of suppliers than retailers. In 2009 the 51 FWF members sourced from about 1.153 factories (which were not all audited) employing 275.000 people<sup>43</sup>, and in 2008 the 43 members had a turnover of approximately 2 Billion Euros (FWF 2008a:44)<sup>44</sup>. The BSCI has therefore managed to scale up its potential impact, as compared to the FWF.

However, how many members an initiative has and how many audits it conducts does not tell us anything about the actual impact an initiative has on workers, as the depth of the impact (i.e. how much the lives of single workers improve) also has to be taken into account. Whereas business initiatives are often criticized for lacking depth in impact, multi-stakeholder initiatives are criticised for their problem of scaling up their impacts: they do not achieve large impact because they only have few members (Utting 2005b; United Nations 2007; Wells 2007:63).

**Table 9: Number of members of BSCI / FWF**

	2004	2005	2006	2007	2008	2009	2010
<b>BSCI</b>	23	43	54	88	241	402	520 (April)
<b>FWF<sup>45</sup></b>	14	16	29	34	43	51	53 (March)

Sources: Personal communication BSCI & FWF 4/2010

### 7.1.3 Financing

The member companies in both initiatives pay an annual membership fee. In the FWF it

<sup>41</sup> Each initiative defines what it regards as a 'risk country', basically these are countries in which the risk of labour rights violations is seen as high. There is a large overlap between the two initiatives. See [www.bsci-eu.org](http://www.bsci-eu.org), [www.fairwear.org](http://www.fairwear.org)

<sup>42</sup> In 2007 agricultural products were added.

<sup>43</sup> Personal communication FWF 4/2010

<sup>44</sup> Until 2009 Mexx was the largest FWF member, which had approx. 1 billion Euro turnover.

<sup>45</sup> These figures refer to FWF affiliates and ambassadors, while the remainder of the chapter refers to affiliates, since the handbook for ambassadors was not finished at the time of analysis.

ranges from 2.500 to 78.000 Euro, depending on turnover, and that of the BSCI ranges from 3.000 to 30.000 Euro, depending on turnover and on membership in the FTA<sup>46</sup>. Membership in both initiatives can be terminated from both sides.

There is little transparency regarding how the BSCI is financed. The office, the tools and capacity building activities like awareness raising workshops and advanced training workshops for suppliers are financed by the member fees, and the audits and qualification is paid either by the members or the suppliers. Additionally, every auditor pays a fee of 100 Euro per initial audit. On a project basis, certain activities are co-financed by the European Commission.

The FWF budget was 731.000 Euro in 2007. The Dutch Ministry of Foreign Affairs paid 42%, the members paid 27% with their fees, NGOs (ICCO<sup>47</sup>, Oxfam, ISCOM) contributed 23%, and other sources 8%. These resources make expansion difficult: “We would like to have many new members, but we have limited resources to control them” (FWF 2008c).

## 7.2 Legislative regulation in BSCI & FWF

Legislative regulation asks who takes the decisions and who sets the rules of an initiative (→ CH 7.2.1), and which rules result from it. The most important rules regarding legislative regulation refer to the Codes of Conduct and the scope of responsibility (→ CH 7.2.2), and the rules defining the transparency of the initiative (→ CH 7.2.3). Table 10 sums up the main differences in the legislative regulation between BSCI and FWF that are explained in this chapter.

**Table 10: Contested issues between BSCI and FWF in rules regarding legislative regulation**

	BSCI	FWF
<b>Who defines the initiatives' rules? (→ 7.2.1)</b>	<ul style="list-style-type: none"> <li>Only companies</li> </ul>	<ul style="list-style-type: none"> <li>50% business associations representing companies, 25% trade unions representing workers, 25% NGOs representing civil society</li> </ul>
<i>What role do stakeholders play?</i>	<ul style="list-style-type: none"> <li>Advice</li> </ul>	<ul style="list-style-type: none"> <li>Decide in the board</li> <li>Advice in the partner networks</li> </ul>
<b>Which social standards are contested? (→ 7.2.2)</b>	<ul style="list-style-type: none"> <li>Living wages are not mandatory</li> </ul>	<ul style="list-style-type: none"> <li>Living wages are mandatory (but only achieved in the long-term)</li> </ul>
<b>How is the members' responsibility for standards in their supply chains defined? (→ 7.2.2)</b>	<ul style="list-style-type: none"> <li>Members have the responsibility to involve direct suppliers into the BSCI system;</li> <li>Suppliers are responsible for taking 'action' and implementing the standards</li> </ul>	<ul style="list-style-type: none"> <li>Members have to disclose their full garment supply chains to FWF and audit labour standards</li> <li>Members have to work with the suppliers of 'own production' to improve standards</li> </ul>
<i>Who is responsible for improving social standards in the supply chains?</i>	<ul style="list-style-type: none"> <li>Mainly the suppliers and their stakeholders in the producing countries</li> </ul>	<ul style="list-style-type: none"> <li>The buyers and suppliers share a responsibility</li> </ul>
<i>Where does the members' responsibility end?</i>	<ul style="list-style-type: none"> <li>Members' responsibility extends only to the direct supplier to whom there is a business relationship</li> </ul>	<ul style="list-style-type: none"> <li>Members' responsibility extends throughout the whole garment production, but is not limited to</li> </ul>

<sup>46</sup> Personal communication BSCI, FWF 2010

<sup>47</sup> ICCO is an 'inter church organisation for development cooperation'

	business relationships	
<b>What is made transparent?</b> (→ 7.2.3)	<ul style="list-style-type: none"> <li>Only a short version of the policy documents is published</li> <li>Audit results in an aggregated form</li> <li>Stakeholders that participate in the producing countries are not disclosed.</li> </ul>	<ul style="list-style-type: none"> <li>All policy documents are published</li> <li>Reports about the progress of each company</li> <li>Stakeholders that participate in the producing countries are not disclosed</li> </ul>

### 7.2.1 Defining the rules

Whereas in the BSCI only companies formally define the rules, in the FWF organizations representing companies and workers together set the rules. In the *Committees* of the **BSCI** the member companies decide on issues related to their scope of responsibility (auditing, capacity building, communication system) and prepare proposals upon which the *Members' Assembly* decides, if it relates to strategy matters (→ Figure 9)<sup>48</sup>. The *BSCI Stakeholder Board* has a consulting function. It can initiate and advise on policy and systemic questions of the BSCI except issues related to the budget and internal organizational questions (BSCI 2007b:4). The power to make decisions remains with the member companies.

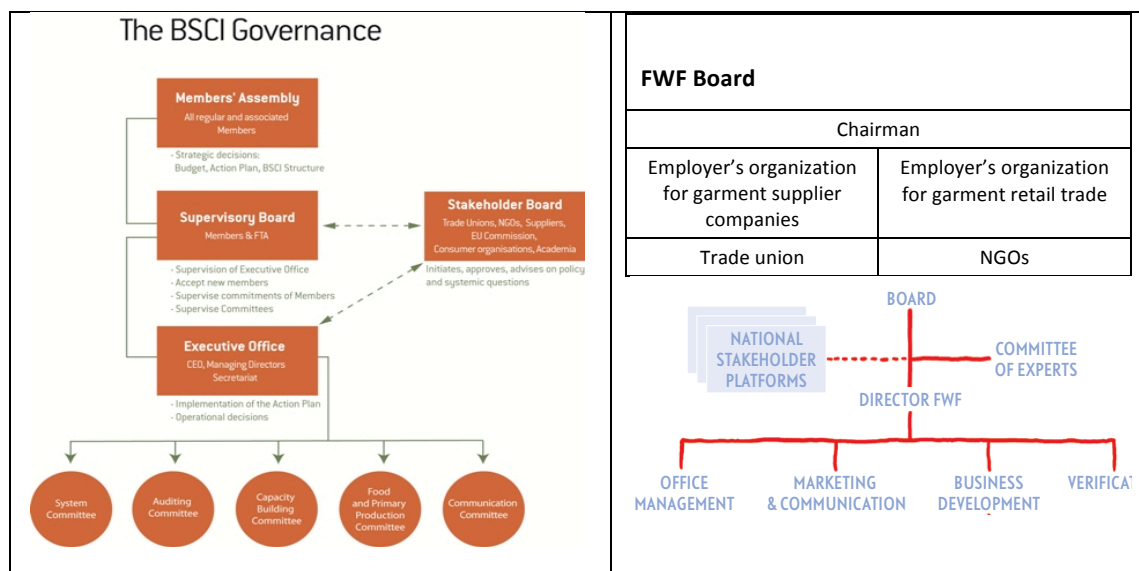


Figure 9: The governance system of the BSCI & FWF

In the **FWF** the *Board* is the highest decision-making body, and representatives from the four founding stakeholders have an equal vote: a business association for retailers and one for suppliers, NGOs and trade unions (FWF 2008a:34) (→ Figure 9). The *Board* sets the general policy and is responsible for the work carried out by the *Committee of Experts* (CoE) and the *FWF Staff* (FWF 2009c)<sup>49</sup>. The fact that the CCC has been on the board since the beginning has led to the situation that the FWF policies come very close to what the CCC demands. The FWF also has *National Stakeholder Platforms* in the members'

<sup>48</sup> Companies in working committees prepare suggestions for decision. The BSCI *Executive Office* operates the initiative and makes sure that it runs efficiently. The *Supervisory Council*, into which BSCI members are elected, controls the *Executive Office* and the members' commitments, and it accepts new members.

<sup>49</sup> The *FWF Committee of Experts* and the *FWF Staff* give policy advice to the *board*. The *staff* executes the policy that is set by the *Board* and reports back to the *Board* and the *Committee of Experts* (FWF 2008a:34).

countries, e.g. in the Netherlands, in Switzerland, Germany. At these platforms members meet each other and stakeholders meet and exchange information and expertise.

Both initiatives interact with stakeholders in the production countries. The BSCI initiates so-called *round tables*, where various stakeholders of the country engage in dialogue. According to one of its six principles the FWF also involves stakeholders in producing countries. These stakeholders give policy advice, suggest and qualify auditors that carry out FWF audits / verification, qualify producers, and are the local handler of the complaints mechanism, with whom workers can officially complain (FWF 2002:5-2f; FWF 2009c). Formally, stakeholders in the partner networks only have a consulting function to the FWF, and do not take the decisions. However, in practice they play a concrete role e.g. they formulate FWF country reports (see below) and they act as local complaints handlers.

Differences in the decision-making structure have strongly influenced what rules are eventually defined, as the following chapters point out.

### 7.2.2 Codes of Conduct

What ‘Codes of Conduct’ (CoC) are defined and where are they taken from? Both initiatives define a CoC, and the members’ suppliers are obliged to comply with these standards, which is controlled, i.e. audited. The BSCI and the FWF both include the core norms of the ILO into their CoC, which are the usual guidelines in the area of working conditions today. In addition, both argue that if national labour laws are higher than these norms, the standards defined in these laws become mandatory.

However, there are some differences in the codes of the two initiatives. On the one hand, the BSCI has some codes beyond those of the FWF that refer to environmental issues, the implementation of a policy for social accountability, and the establishment of an anti-bribery and an anti-corruption policy. On the other hand, the most contested difference between the two initiatives, is that the BSCI demands the payment of national minimum or local industry wages, whereas the FWF demands the payment of a living wage (→ below & CH 8.2).

#### Box 5: The standards set by both initiatives

- Forced Labour (ILO Convention 29 = C29), C105
- Discrimination in employment C100, C111
- Child labour C138, C182
- Freedom of association & collective bargaining C87, C98, C135, R143
- Remuneration C26, C131
- Working hours C1
- Organizational health and safety C155

Source: [www.bsci-eu.org](http://www.bsci-eu.org), [www.fairwear.org](http://www.fairwear.org) (The complete codes can be downloaded here.)

### Members’ responsibility

Both, the BSCI and the FWF claim that their objective is to improve working conditions in the global garment industry and that they ask their members to ‘take responsibility’ to contribute to this objective. However, there are different understandings of ‘taking responsibility’. So what do the initiatives’ rules define as ‘taking responsibility’, and where does the members’ responsibility end? One basic responsibility or commitment of

BSCI and FWF members is that they have to make their direct suppliers sign the Code of Conduct.

Beyond this, the **BSCI** member companies are responsible for ‘encouraging’ their suppliers to get involved in the audit process, i.e. ‘initiating’ improvements in their supply chains: “The ultimate goal of the BSCI is to initiate sustainable improvement in supplier countries” (BSCI 2007b:10). However, the responsibility for ‘action’, which is understood as implementing the codes and moving out of the ‘non compliant’ area, is with the stakeholders in the production countries:

*The responsibility for action will most likely<sup>50</sup> be shared between suppliers and the governments of the supplier countries ... Governments, trade and business associations, trade unions, NGOs and other civic groups should take the responsibility for improving social standards in their own countries. These groups should make strong commitments to improvement and thereby make the process their own. ... The BSCI will encourage and promote any serious attempt made in the supplier countries toward these ends. (BSCI 2007b:2,10)*

In practice this is done as follows: A BSCI member commits to involve his direct suppliers into the BSCI system by obliging them to implement the CoC and by controlling that he is audited. Additionally, 2/3 of a members’ suppliers must have ‘good’ or ‘improvements needed’ audit results within 5,5 years. The member then has to control whether the supplier is making any progress in the implementation of the standards by comparing the results of the factory audits and re-audits (→ CH 7.3 & 9). If a direct supplier to the BSCI member subcontracts production the BSCI member is not responsible for this subcontractor anymore. Instead, the supplier is responsible for obliging the subcontracted supplier to comply with the BSCI CoC and for auditing whether this happens.

However, if the direct supplier is situated in a non-risk country, he can either disclose from where he sources; if he does not want to do that he can become a member of the BSCI, too. As many import agents regard their suppliers as a business secret, membership of BSCI has seen a massive rise since 2008 (→ Table 9). For instance, the retailer *Aldi* sources most of its garments via suppliers in non-risk countries, and according to the BSCI system, it is not responsible for auditing or improving the producers that are situated, e.g. in Bangladesh. Furthermore, members can be active in a National Contact Group, which “serve to discuss social responsibility concerns in the respective countries and to exchange experiences and views of BSCI members”, and communicate about their BSCI engagement in order to increase their credibility (BSCI 2008:14)<sup>51</sup>.

In the FWF members and their suppliers share the responsibility for implementing the standards: “the code can only be fulfilled when sourcing companies, as well as factory management, actively pursue practices that support good working conditions”<sup>52</sup>. Each member has to write up a standardized work plan in which it has to disclose his full supply register to the FWF, i.e. “suppliers, sub-contracted suppliers, licensees, and sub-contracted suppliers to licensees, who are engaged in cutting, sewing, embroidering, knitting, ironing, finishing, marking, packing, or other preparation of finished garments”

<sup>50</sup> BSCI did not comment what “most likely” means in this context.

<sup>51</sup> information about how social compliance is improved in the supply chain, but also which concrete measures have been taken. (BSCI 2008:14)

<sup>52</sup> <http://fairwear.org/about>, 12.12.2009



(FWF 2002). Suppliers are seen as responsible for implementing the CoC, but the FWF member is responsible to support them doing this in two ways: First, they have to ensure that their purchasing policies do not prevent their suppliers from implementing the Codes they demand (→ CH 7.4). Second, members are obliged to audit at least 90% of their suppliers of ‘own production’<sup>53</sup> within three years (→ CH 7.3). The FWF then conducts verification audits at 10% of the suppliers to control whether the members do enough that their suppliers can improve the standards (FWF 2008a:32). In addition, FWF members have to publish a social annual report.

### Minimum wages

By far most companies – like the BSCI members – demand in their Codes of Conduct that at least minimum wages<sup>54</sup> must be paid, and similarly most factory managers argue that they pay according to the legal or industrial minimum wage scheme. Suppliers are asked to pay more, if the wages are too low to pay the daily living, however, this is not mandatory.

Legal minimum wages widely vary between countries, and often also within a country. Different wage levels usually apply to different jobs within a factory and different grades (→ compare Table 11). In some regions, like in Tirupur (India) and in Bangladesh, minimum wages are discussed and set by a tripartite body that includes business representatives, trade unions and the government. The purpose of setting up a tripartite body is to equally represent all relevant stakeholders and to finally lead to a fair result. In India, the state sets a basic wage that is topped by a ‘Variable Dearness Allowance’, which is set twice a year, based on the rate of inflation. In Bangladesh, the minimum wage was not adapted to inflation rates between 1994 and 2006, when it was finally increased from 930 Taka (Tk) to 1.662 Tk – and has since not been adapted to the inflation rate<sup>55</sup>.

### Living wages

The FWF (like most NGOs, trade unions and workers) demands that so-called *living wages*<sup>56</sup> (LW) are paid. Similarly, the multi-stakeholder initiatives SAI, WRC and ETI also demand that living wages are paid (→ CH 2.2). In the BSCI system living wages are ‘best practice’, i.e. factories are encouraged to pay a living wage, and those that certify according to SA 8000 would have to pay living wages.

<sup>53</sup> ‘Own production’ is the production in all factories that manufacture products which are commissioned by the FWF affiliate, directly or through an agent or other intermediary, normally to the design of the FWF affiliate.

<sup>54</sup> Wages paid for regular working hours, overtime hours and overtime differentials shall meet or exceed legal minimums and/or industry standards. Illegal, unauthorised or disciplinary deductions from wages shall not be made. In situations in which the legal minimum wage and/or industry standards do not cover living expenses and provide some additional disposable income, supplier companies are further encouraged to provide their employees with adequate compensation to meet these needs. Deductions from wages as a disciplinary measure are forbidden. Supplier companies shall ensure that wage and benefits composition are detailed clearly and regularly for workers; the supplier company shall also ensure that wages and benefits are rendered in full compliance with all applicable laws and that remuneration is rendered in a manner convenient to workers. (In accordance with ILO conventions 26 and 131.) (BSCI Code of Conduct 2009)

<sup>55</sup> This, however, happened in August 2010, when minimum wages were raised to 3.000 Taka after massive protests by trade unions and workers.

<sup>56</sup> Wages and benefits paid for a standard working week shall meet at least legal or industry minimum standards and always be sufficient to meet basic needs of workers and their families and to provide some discretionary income. (ILO Conventions 26 and 131). Deductions from wages for disciplinary measures shall not be permitted nor shall any deductions from wages not provided for by national law be permitted. Deductions shall never constitute an amount that will lead the employee to receive less than the minimum wage. Employees shall be adequately and clearly informed about the specifications of their wages including wage rates and pay period.

Living wages usually go well beyond the legal minimum wages (→ compare Table 11). However, there is no fixed definition of a living wage, and it is much disputed how high living wages should be in a certain area, and how to determine them. One difficulty of fixing living wages is that defining them through a basic needs approach, for instance, allows various interpretations, and therefore fixing is a matter of deliberation and finding an agreement with all relevant stakeholders. Due to the difficulties in defining and implementing living wages, the fact that the FWF demands a living wage in its CoC does not mean that these living wages are implemented in the short-term – but they remain a long-term aim: Regarding the short-term, the FWF wage policy requires that suppliers to FWF member companies pay “at least this best practice wage, or legal minimum wage whatever is higher” (FWF 2009f). However, in the long-term, according to its developmental approach, the FWF follows the strategy of a wage ladder to determine the living wages and aim to move the supplier up the ladder (→ Box 6). The FWF does not indicate what progress companies have to make regarding the increase in living wages, but it obliges members to “publish their results at implementing a living wage” (FWF 2009f). Some issues regarding wages are published in the management system audit reports. For instance, a report on Switcher states: “Wages (in a factory in Tirupur) were found to be above the legal minimum wage, but below the Collective Bargaining Agreement wage of the Tirupur Exports Association (TEA)” (FWF 2009g).

**Table 11: Wages and living wages in Bangladesh and India**

	Bangladesh (Tk)	India (Tirupur) (Rs)	India (Delhi) (Rs)
<b>Minimum / industry wage</b>	1.662	2.236 (a) 3.302 (c)	3.757
<b>Living wage (FWF wage ladder)</b>	8.000 – 15.000	Wage ladder still under preparation	Wage ladder still under preparation
<b>Living wage (Asian floor wage)</b>	9.450 (d) 10.754 (e)	7.695 (d) 6.968 (e)	

Sources: CCC2009, Government of Tamil Nadu<sup>57</sup>,

a: <http://www.tn.gov.in/gorders/labour/labemp-e-74-2004-2D.htm>

b: Bangladesh Institute for Labor Services (BILS) 2006

c: The Hindu 26.12.2008 (R.Vimal Kumar)

d: Minimum wage according to AFW calculation (Merk 2009:52)

e: AFW in local currency, including purchasing power parity conversion (Merk 2009:57)

#### **Box 6: The ‘wage ladder’ approach to living wages**

Due to the difficulties of determining a living wage the FWF has been planning to add a so-called ‘wage ladder’ into the new country studies. The wage ladder is a method to represent the wage level of a factory. The FWF (2009f) writes:

„The country studies contain some benchmarks on the living wage that may apply for a specific country (or region), in the so-called ‘wage ladder’. These benchmarks contain both ‘real’ figures, like poverty line, minimum wage, best practice amongst garment factories; as well as calculated figures as to what would be a living wage in this country (or region). These calculations can be made by government bodies, trade unions and or NGO’s. This research will include looking at possible CBA wages. These figures will also be published and regularly updated. In case there are not enough benchmarks for a certain region or country to guide a process of improvement on wages, FWF will - in cooperation with others - commission a research project according to generally accepted standards that will guarantee acceptance amongst the local stakeholders, to establish a calculated measure of the living wage.“

<sup>57</sup> <http://www.tn.gov.in/gorders/labour/labemp-e-74-2004-2D.htm>

### 7.2.3 Transparency

How transparent are the two initiatives about how decisions are taken and what rules are defined?<sup>58</sup> Transparency is one of the six governing principles of the FWF: “For FWF this implies transparency about FWF’s policies, country strategies, activities and methods, the receipt of complaints and the key elements of their outcomes and about affiliates and ambassadors’ performance” (FWF 2009c). The BSCI also regards itself as a transparent initiative, but does not include transparency as a basic principle or objective. It states: “The system's remarkable transparency gives it the greatest possible internal and public credibility” (BSCI 2009c:2). The BSCI publishes the document “BSCI system: rules and functioning”, which explains the functioning of the system in 10 pages. The BSCI members, the members of the executive office and of the supervisory board and of the stakeholder board are published on the website. However, the BSCI does not disclose policy documents in as much detail as the FWF, e.g., describing the way auditing is conducted in detail (compare Table 12).

**Table 12: Documents issued by FWF and BSCI**

	BSCI	FWF
Charter / System description	Yes	Yes
Detailed descriptions of various policies	No	Yes
Country studies (presents how the initiative interprets the local situation in a sourcing region)	No	Yes
Annual reports	Yes, including GR3 table	Yes
Newsletters	Yes	Yes
<b>Legislative regulation</b>		
Who takes (strategic) decisions?	All members are listed, and by the rules these take the decisions	All board members are listed, who take decisions
Details about the decision-making committee / board, like minutes etc.	No	No
Which stakeholders participate in the stakeholder board / national stakeholder platforms	Yes	No
Which stakeholders participate at the Round Tables / partner networks	No	No
Code of Conduct	Yes	Yes
Membership fees	Yes	Yes
<b>Judicial regulation</b>		
Complaints	No	Yes: amount of received complaints & in detail solved complaints
Auditors listed	Yes	No
<b>Executive regulation</b>		
Formats for work plans, social reports	No	Yes
Social report of every company obligatory by the PSI	No, only aggregated audit results	Yes, social report by members
Reporting by PSI on single companies	No, only aggregated audit results	Yes, management system audit report by FWF

<sup>58</sup> For an overview see Table 12; for more details on the transparency regarding the judicial and executive governance compare chapters 7.3 & 7.4

The FWF and the BSCI both publish annual reports, which present each initiative including their governance system, member companies and activities in the past year. In their report, the BSCI presents the aggregated results of the audits conducted so far as “our progress” (→ CH 9.1.2). The FWF, in contrast, obliges its members to publish detailed social annual reports in a given format and to publish management system audit reports that both present details concerning the implementation at every member company. Having said this, in 2009 11 of 51 member companies published their reports. Whereas the FWF does not say what rules of the Global Reporting Initiative it respects, the BSCI report lists which of the GR3 rules it respects, claiming that it “cannot respect them all in detail” (BSCI 2007a:3).

Regarding legislative regulation, the FWF and the BSCI both publish, who takes decisions; but they both do not say which stakeholders participate in the producing countries (in partner networks / at round tables), and why they were selected or why others were excluded.

The *country studies*<sup>59</sup> are quite particular to the FWF system and do not exist in the BSCI. In these documents the FWF defines how it interprets regional priorities regarding labour standards in its members’ sourcing countries. These studies are commissioned by the FWF and written by local partners in cooperation with verification staff. Country studies are an attempt to codify a local perspective on the labour rights situation, including the priorities from this perspective. These studies aim to facilitate the integration of this perspective into the evaluation of the situation in factories during audits. However, many studies have not been updated more than five years.

The transparency of both systems is limited mainly by business confidentiality and the security of workers. They respect the confidentiality of business data such as the supplier register or audit reports, which are only visible to the staff members. No stakeholder and no representative in the governing bodies has access to this company specific information.

### 7.3 Judicial regulation in BSCI & FWF

The rules for judicial regulation define the mechanisms and practices used to control that producers comply with standards. Both initiatives use factory audits, however, the FWF additionally uses verification audits in the members’ headquarters and their factories. Table 13 sums up the main differences in the rules concerning legislative regulation.

**Table 13: Contested issues between BSCI and FWF in rules regarding judicial regulation**

	BSCI	FWF
<b>Commitments – what responsibility does the member have?</b>	<ul style="list-style-type: none"> <li>Integrate 2/3 of the suppliers into the BSCI system in 3,5 years</li> <li>2/3 of suppliers must be at least ‘improvements needed’ after 5,5 years</li> </ul>	<ul style="list-style-type: none"> <li>Audit at least 90% of supplier in 3 years</li> <li>Write a workplan</li> <li>Publish a social annual report</li> <li>Adapt the sourcing policies to the demands of the FWF</li> </ul>

<sup>59</sup> So far these are published for the following countries: Bangladesh, China, India, Turkey, Bulgaria, Macedonia, Poland, Ukraine, Romania

		<ul style="list-style-type: none"> <li>Accept verification by the FWF</li> </ul>
<b>Who conducts audits?</b>	<ul style="list-style-type: none"> <li>SAAS accredited auditors</li> </ul>	<ul style="list-style-type: none"> <li>Audit teams designated by the member conduct audits</li> <li>FWF audit teams verify the audits (10% in 3 years)</li> </ul>
<b>Are workers interviewed during audits?</b>	<ul style="list-style-type: none"> <li>Only within the factory</li> </ul>	<ul style="list-style-type: none"> <li>In and outside the factory</li> </ul>
<b>How are the buyers controlled?</b>	<ul style="list-style-type: none"> <li>Not integrated</li> </ul>	<ul style="list-style-type: none"> <li>Annual management system audits</li> </ul>
<b>How can workers complain about working standards?</b>	<ul style="list-style-type: none"> <li>Auditors take complaints</li> <li>In India &amp; China BSCI representatives take complaints</li> </ul>	<ul style="list-style-type: none"> <li>In every sourcing region where the FWF is active there is a local complaints handler</li> </ul>
<b>What is made transparent?</b>	<ul style="list-style-type: none"> <li>Aggregated audit results</li> </ul>	<ul style="list-style-type: none"> <li>Descriptions of the progress each company does (social &amp; MSA reports)</li> </ul>
<b>How are audits financed?</b>	<ul style="list-style-type: none"> <li>The member and his supplier agree on who pays audit</li> </ul>	<ul style="list-style-type: none"> <li>The member pays the internal audits</li> <li>Verification audits paid for by FWF</li> </ul>

### 7.3.1 Auditing rules of the BSCI

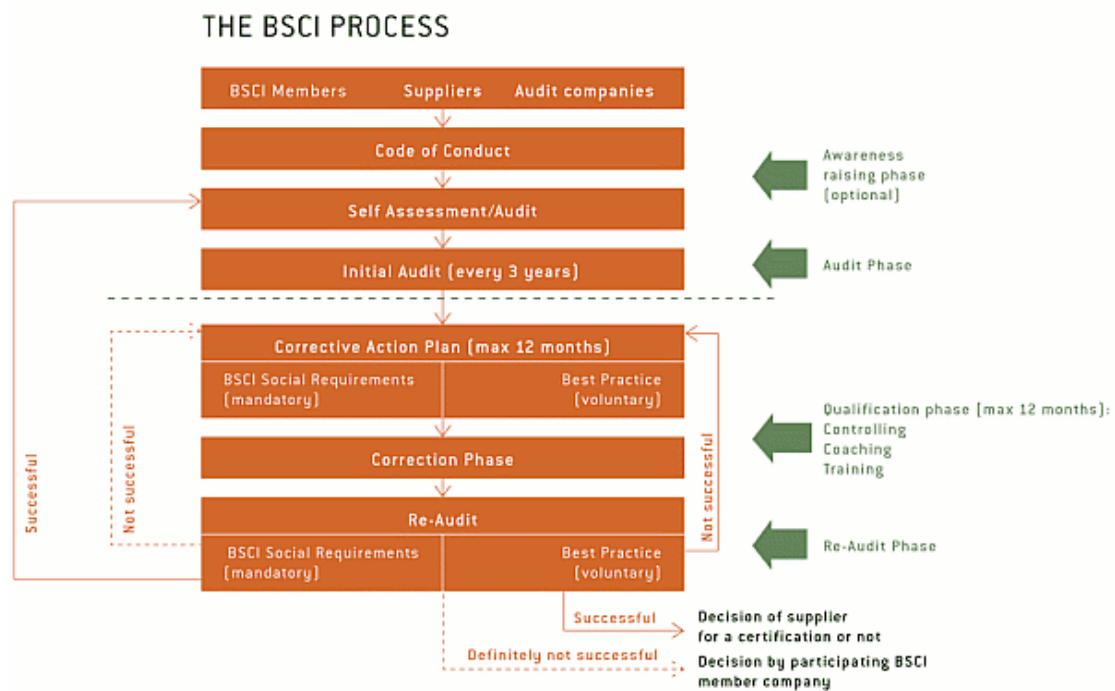


Figure 10: BSCI audit procedure

Figure 10 presents the ‘BSCI process’. A supplier has to sign the Code of Conduct, and based on this do a self-assessment, which provides “initial information regarding the supply chain and the supplier's performance and defines the priority and urgency of further audit measures” (BSCI 2007b:9). Initial audits then have to be conducted according to the members’ commitment. The BSCI pre-selects certain audit companies that are accredited by *Social Accountability Accreditation Services* (SAAS), and in each audit team conducting an audit there must be a SA 8000 accredited lead auditor. An initial audit takes between 1,5 and 4,5 days, depending on the factory size. Re-audits take 1-2 days. The audit team works according to the ‘BSCI Management Manual’, the ‘Audit Guidelines’, and the ‘BSCI Audit Questionnaire’, which are not disclosed publicly (BSCI 2007b:9; BSCI 2008:20; BSCI 2009a). The audit rules ask auditors to examine various

documents, inspect the production site, interview the management and some workers<sup>60</sup> inside the factories. Auditors shall “cooperate with local non-governmental organisations and employee representatives” – but the cooperation is not specified in more detail (BSCI 2007b:8). After an audit the factory is assessed, either as ‘good’, ‘improvements needed’ or ‘non-compliant’ (see Box 7). By far most of the suppliers audited for the first time will result as ‘non compliant’ or ‘improvements needed’. Members have to enter supplier profiles and auditors have to enter the overall audit results into an electronic supplier database (BSCI 2007a:10; BSCI 2007b:9). This database is shared in the BSCI.

**Box 7: BSCI Assessment: Evaluating audit results**

**Good:** “No deviation from BSCI Social Requirements” or “Minor deviations from BSCI Social Requirements, but full protection of employees is observed”: There is no significant deviation from the requirements. The auditor can assess an audit result with *good*, if there are not more than two deviations in non-crucial points, no immediate danger to employees and no systematic faults.

**Improvements Needed:** “Deviations in less than half of the requirements and in no crucial points”: Fulfilment of at least half the audit points.

**Critical:** “Deviations in the majority of requirements and/or in crucial points: The requirements are not fulfilled in more than half the points, and/or not fulfilled in crucial points.

**NA:** Requirements do not match to the company structure.

Source: BSCI Audit Guidelines – BSCI 10.1-03/04, p.14

Additionally, the BSCI checks “if the audit guidelines are applied in a correct manner by the auditors” by so-called ‘surveillance audits’<sup>61</sup>. In these audits SAAS staff join BSCI auditors when they visit a factory in so-called surveillance audits (BSCI 2009a:7) (B16, B30):

*Gegenchecks, Kontrollchecks auch der Audits, ob auch der Auditor das so verstanden hat, richtig verstanden hat, dass wirklich das, was ein Knock-out Kriterium ist, auch als Knock-out drin ist, und nicht dass da drin steht, zahlt keine Mindestlöhne, hat aber bestanden oder so was. Also da gibt es Qualitätschecks. (B3)*

After an audit the auditor agrees with the factory management on a ‘corrective action plan’, which sets “necessary improvements and deadlines for every single corrective action” and which suppliers have to integrate within 12 months (BSCI 2007b:9). A re-audit then controls what is implemented. The BSCI rules say that the BSCI member shall support his suppliers in the improvements, but they do not specify this support. The termination of the business relation must be considered as a ‘last resort’, only if the supplier does not comply with the obligations after a ‘reasonable period of time’ at all (BSCI 2007b:9). It is open to the members’ own interpretation and decision what this means. If a supplier is audited as ‘good’ the BSCI member shall encourage his supplier to become SA 8000 certified, which the latter can decide voluntarily and usually has to pay for by himself.

Each BSCI member must involve 2/3 (67%) of its buying volume in defined ‘risk countries’ into the BSCI auditing process within 3½ years after joining the initiative. This only refers to the direct suppliers in risk countries, who then have to ensure “that the Code of Conduct is also observed by all subcontractors involved in production processes of final manufacturing stages” (BSCI 2007b:7) – however, audits are not mandatory regarding subcontractors. BSCI demands that a member terminate the business relationship with a supplier, if that supplier has not managed to improve from ‘non

<sup>60</sup> 1-10 for factories up to 100 workers, 25-30 for factories of 750-1000 workers (Personal communication BSCI 4/2010)

<sup>61</sup> 40 were conducted in 2009 (Personal communication BSCI 4/2010)

compliant' within 5 ½ years.

The BSCI 'Supervisory Board' checks the members' commitment by looking at a list that indicates how many suppliers a member wanted to involve in the BSCI process and how many it eventually involved (BSCI 2008:14). If the member is well behind his targets, the 'Supervisory Board' discusses what shall be done with the member, usually issuing a warning, but some members were also already excluded. In addition, each member shares audit results in the BSCI suppliers' database (BSCI 2008:14), which shall help to reduce multiple audits.

### 7.3.2 Auditing and verification rules of the FWF

By endorsing the 'FWF Code of Labour practices' (i.e. Code of Conduct) a FWF member agrees to monitor labour conditions in "all workplaces where they source their garments" and, where necessary, take steps to improve them, to have this verified by the FWF and to report about the improvements (FWF 2009a:3). The FWF distinguishes between audits carried out by affiliates and audits carried out by the FWF.

The audits conducted or commissioned by the affiliate "determine the degree to which companies comply with the labour standards". They are conducted and paid by the FWF member, who often commissions them to local FWF audit teams (→ compare Box 8), if they do not have the adequate staff for conducting them or do not outsource it to third-party auditors. As in a BSCI audit, auditors check documents, and talk with the managers and workers. However, a relevant difference to BSCI audits is that FWF auditors have to interview workers outside the factory premises. Members have to commit to audit at least 90% of the 'own suppliers' within three years, but the rules do not prescribe how much the suppliers must improve. 'Own suppliers' refers to all producers sewing according to the design of the FWF member. Like in the BSCI, the auditing team leader has to write an audit report, recommend steps for improvement of non-compliances with the CoC in a corrective action plan (CAP), and discuss both with the factory management. The CAP shall include "realistic, effective and measurable plans for improvement" with a clear timeframe. The FWF member then discusses the outcome of the audit and the CAP with the supplier and agrees on a timeframe for corrective action (FWF 2009a:3).

The main task of the FWF is to verify that members do everything to implement the CoC. One part of the verification process is a '**factory verification audit**', by which the FWF aims to "assess working conditions at factories in order to check whether the (internal) monitoring activities are effective and whether corrective action plans are executed" (FWF 2009b). The FWF verification audits are commissioned and selected by the verification staff in Amsterdam, conducted by the local audit teams and reported to the initiative. Every three years 10% of each member company's supplier facilities are verified.<sup>62</sup>

Additionally, the FWF conducts '**management system audits**' (MSA) once a year at each member company to assess the progress each member has made against fixed 'management system requirements' (MSR) (→ CH 9). The aim of an MSA is to assess

<sup>62</sup> Verification audits are not conducted, if the FWF audit teams have already conducted internal audits.

whether members “adapt their management system in such a way that effective implementation of the Code of Labour practice is possible” (FWF 2009b:12). With help of the MSA the FWF wants to assess “the extent of meaningful improvements to internal systems and the results and achievements of these systems”<sup>63</sup>, and claims that fulfilling the MSR allows an effective implementation of social standards. The background studies set the benchmark for ‘meaningful’ improvements. During an MSA the FWF staff interviews various personnel in the member’s office, reviews internal company documentation on procurement policy and interaction with suppliers and tests company systems (FWF 2008a:47). Based on the management system audits the FWF writes a report that includes requirements and recommendations for improvement. These reports have been published on the website since 12/2009. There is no experience so far, when FWF members sanction suppliers.

#### **Box 8: FWF audit teams**

In the main sourcing countries the FWF recruits and trains audit teams and familiarises them with the own working method. Each audit team has three local experts. The member of an audit team must fulfil certain requirements that are similar to those of SAAS-accredited auditors. Every audit team has to participate in a two-day seminar (free-of-charge) and the FWF joins the audit team on the first few audits.

Members of a FWF audit team must study the ‘FWF Background Studies’ and the ‘FWF Audit Manual’, which are both publicly available. The ‘FWF Background Studies’ are available for most countries in which suppliers to FWF members operate and shall help to identify precisely which improvements must be implemented, how ‘big’ the steps must be, how quickly they should be implemented, which local organizations must be consulted and involved, and which are adequate improvements in the local context. The ‘Audit Manual’ is a “guide for those who perform any workplace audits on labour conditions under the FWF system” and describes in detail how every social audit shall be conducted.

Source: (FWF 2009a:5f), (FWF 2005:14), [www.fairwear.org](http://www.fairwear.org)

### **7.3.3 Financing audits**

According to the BSCI rules the member and its suppliers have to agree on who pays the audits and the corrective actions. Companies deal with this differently. Whereas some members pay for audits themselves, many ask the suppliers to pay for the audits, and this is similar for the corrective actions. BSCI audit costs are not publicly available and vary according to factory size, but the average audit price should be about the same as an audit by a FWF audit team. BSCI membership fees include the management of the factory database, but auditors must pay 100 Euros for each initial audit as a fee for using the BSCI audit guidelines<sup>64</sup>.

FWF members pay for the internal audits themselves, and they agree with their suppliers on who pays for corrective actions. Verification audits are paid by the initiative, which explicitly uses the membership fees for this purpose. The costs for audits vary according to factory size, but if a FWF audit team of three local experts conducts an audit in a factory with around 500 workers it costs around 2.000 Euro. The membership fee of the FWF covers the costs for training of local audit teams, writing background studies, verification audits, management system audits, and the local complaints mechanism.

<sup>63</sup> <http://fairwear.org/page/verification>, 12.12.2009

<sup>64</sup> “The objective of this fee is to retribute the BSCI as we offer auditing companies a business platform. It is also to cover the costs generated by the system such as the organisation of regular meetings with the CBs and updates and translations of management tools they use in their daily work.” [www.bsci-eu.org](http://www.bsci-eu.org) (1.2.2010)



## 7.4 Executive regulation in BSCI & FWF

The two initiatives follow very different approaches to support their members' suppliers in improving their standards (→ Table 14). Only the FWF claims that it adapts the members' purchasing policies in such a way that suppliers can implement social standards (→ CH 7.4.1). Both initiatives say that the skills of factory managers have to be improved and management systems need to be installed in the factories (→ CH 7.4.2). Furthermore, both say they empower workers (→ CH 7.4.3).

**Table 14: Contested issues between BSCI and FWF in rules regarding executive regulation**

	BSCI	FWF
<b>Rules regarding purchasing practices</b>	<ul style="list-style-type: none"> <li>No rules, but BSCI provides trainings on how to adapt policies</li> </ul>	<ul style="list-style-type: none"> <li>Buyers have to guarantee that their purchasing practices enable the suppliers to implement standards</li> <li>The FWF verifies the changes implemented by the company with help of MSA</li> </ul>
<b>Rules regarding qualification of managers</b>	<ul style="list-style-type: none"> <li>Awareness and advanced trainings offered by BSCI free of charge</li> <li>Other qualification buyers and suppliers mutually agree on who pays</li> </ul>	<ul style="list-style-type: none"> <li>There are no fixed rules regarding the qualification of suppliers</li> <li>Auditors and the FWF recommend the members what they could do, but members decide themselves</li> <li>Management system audits control and report what is done</li> </ul>
<b>Rules regarding worker empowerment</b>	<ul style="list-style-type: none"> <li>Workers must be trained regarding their rights</li> <li>Complaints mechanism exists, which is not transparent</li> </ul>	<ul style="list-style-type: none"> <li>Workers must be trained regarding their rights</li> <li>Complaints mechanism exists, which allows any party to issue complaints</li> </ul>

### 7.4.1 Purchasing practices

The **FWF** manual for members specifies that FWF members have to inform their own staff and suppliers about the FWF membership and the implications. Workers should be informed about the labour standards and the monitoring and remediation processes. Generally, companies should follow the recommendations of the corrective action plans and try to integrate them, but there are no fixed rules regarding what their duty is.

The FWF argues that the buyers and the suppliers share a responsibility. Two of the five FWF principles<sup>65</sup> are particularly relevant in this respect. The principle 'supply chain responsibility' commits the buyer to audit his suppliers and help implement corrective action plans (→ CH 7.3). In addition, the principle claims that members must assure "that the terms of trade allow the manufacturer to implement the Code of Labour Practices" (FWF 2009c:3f), which is quite particular for the FWF, and not found in the BSCI or in other MSI in the garment industry. The 'process approach' defines that FWF members have to demonstrate that they make 'sufficient effort' and 'work effectively' to bring labour conditions up to the level of the CoC – but this is not further specified. The management system requirements and the recommendations of the management system audits verify the progress the members are making and their report specifies how the member must adapt their own policies and management system so "that effective

<sup>65</sup> [www.fairwear.org](http://www.fairwear.org)

implementation of the Code of Labour Practice is possible” (FWF 2009c:12). Reasons for this include showing the sourcing policy, the monitoring programme and what is done to implement standards.

The BSCI system rules very generally state that in their sourcing operations BSCI members shall “consider as a significant factor the extent to which they show steady improvement in their social compliance and a strong commitment to steadily advance toward full implementation” of the BSCI requirements (BSCI 2009c:7f). Rather recently the BSCI added a box on its website in which it explains the relevance of buyer training for sustainable sourcing practices.

*The BSCI also organises training sessions tailor-made for social compliance managers and buyers. Time and cost pressure can prevent suppliers from implementing the BSCI Code of Conduct. These seminars help to integrate the idea of the BSCI into daily business and decision-making processes, especially of those staff members who - like the buyers - have a close relationship with suppliers. The training sessions help buying organisations to avoid day to day friction and lead to a long term improvement of the quality and performance at competitive costs. (BSCI 2009a:10)<sup>66</sup>*

However, these considerations are not codified and specified anywhere in the BSCI system rules, as done with the management system requirements in the FWF.

#### **7.4.2 Qualification: Improving management skills**

The BSCI argues that the main problems of poor working conditions originate in the production countries, where factory managers are seen to have low management skills. Thus, the executive regulation in the BSCI system focuses on training and qualifying managers in the supply factories. Trainers and consultants offer different training courses, and the BSCI members and their suppliers agree on who pays the qualification courses, which is eventually not documented. The BSCI offers the following courses:

- General awareness raising workshops are regularly and free of charge offered in the main markets to familiarize suppliers with the problems and the BSCI approach. They aim at suppliers who have not been audited.
- Advanced training sessions that are often conducted after an audit free of charge. They aim to provide the suppliers’ management staff with skills that can be successfully used to fulfil the BSCI requirements, and they help to build a social management system.

In the FWF the member and his suppliers have to agree on who pays for capacity building activities and other trainings.

#### **7.4.3 Empowering workers**

##### **Worker training**

The BSCI and the FWF both say that workers have to be trained to know their rights. In the BSCI, worker trainings sessions aim to build the workers’ awareness about their social rights:

*The objective is to help them influence their own situation. These training sessions will focus on those issues where workers also have a responsibility to ensure good and safe working conditions. We will also pay particular attention to give recommendations on how to build a constructive dialogue within*

<sup>66</sup> <http://www.bsci-eu.org/index.php?id=2027>, 12.12.2009,

*the company. (BSCI 2009a:10)*

### Complaints mechanism

The BSCI rules of November 2009 claim for the first time that “a complaints mechanism is included in the BSCI monitoring system”<sup>67</sup>, as which the recently established BSCI representatives in India and China are regarded. But the rules do not determine in more detail how the mechanism functions.

The FWF sets up a complaints mechanism in each country it operates, which “can be used by workers and their representatives to file complaints about their working conditions and the way the Code of Labour Practices is implemented in factories“, and which “offers additional opportunities for recourse and redress” (FWF 2009d; FWF 2009b:12f). The mechanism works via local contact persons from the partner networks, who must have the trust of the workers, or better, of all parties involved (FWF 2008a:40). Complaints can be filed to the FWF directly or to the local complaints handler selected by the FWF, and if the complaint is justified, it will be followed up according to particular rules. The member company and the supplier will formulate a corrective action, in which the plaintiff will anonymously be involved. Finally, the outcomes of the proceedings are made public.

## 7.5 Conclusions

To sum up, the BSCI and the FWF define their members’ responsibilities very differently, and accordingly set different rules defining how the responsibility of their members is put into practice. I claim that these differences in rules emanate from the fact that the BSCI is a company-driven initiative, whereas various stakeholders, including the CCC, set the rules in the FWF.

Chapters 8-10 examine the main contestations in more detail. From this analysis, the following issues have most potential for conflict:

- **Legislative regulation:** Whereas in the BSCI business defines the rules, different stakeholders do this in the FWF. One result of this is that the BSCI demands members implement at least minimum wages in the factories, whereas the FWF demands living wages. Further, the BSCI regards the members as responsible only for their direct suppliers, whereas the FWF sets members’ responsibility throughout the whole garmenting chain. Finally, whereas the BSCI publishes aggregated information on audits, which cannot be used by the CCC to make single companies accountable, the FWF publishes detailed reports on single companies.
- **Judicial regulation:** The main difference in the auditing approaches is that the BSCI uses third-party auditors to control the factories, whereas the FWF ‘verifies’ the audits conducted by the company or a third-party. The verification approach of the

<sup>67</sup> Before the complaints mechanism was always announced, be set up within the BSCI monitoring system. Local round table discussions for interested parties will be established. These will serve as forums for discussion and the airing of any complaints arising from BSCI monitoring system activities. For complaints regarding certification to other standards (e.g. SA8000), the complaints mechanisms of the respective certification bodies are to be consulted. (BSCI 2007b:9)

FWF also audits the buyers to show whether they enable their suppliers to implement the standards.

- Executive regulation: The FWF requires its members to modify purchasing policies, whereas the BSCI does not. Both demand that managers are qualified and that workers are empowered. The BSCI recently adapted a complaints mechanism.

# 8 Legislative regulation in global production networks

Legislative regulation asks where the rules of a private regulation system come from and **who is actually legitimized to decide upon rules in global production networks** that connect many different actors who are embedded in various legal systems (→ CH 3). The two types of private standard initiatives examined in the case studies – business-driven initiatives and multi-stakeholder initiatives – differ in the question ‘who sets the rules’ by definition. But how are these differences legitimized and contested?

The CCC criticizes the BSCI for being company-driven without properly involving worker representatives and recommends that companies join a multi-stakeholder initiative in which companies and worker representatives share the decision-making power. Worker representation in legislative regulation is seen as relevant because this makes a private initiative more legitimate and credible. But who are these stakeholders and how should they participate? Chapter 8.1 analyses how these two questions are contested.

In chapter 8.2, I show that the question of ‘who sets the rules for private regulation’ strongly influences **which rules are set in the end**, i.e., the defining differences between initiatives. To better understand how business actors and civil society actors legitimize differences regarding the setting of rules, this chapter examines, how one particular Code of Conduct is contested, namely wages.

## 8.1 Setting of rules

The most contested questions between the BSCI and the FWF regarding the setting of rules are: Who sets the rules of a private standards initiative – and how? The main questions relate to how stakeholders are included in this process.

### 8.1.1 Who must define the rules of private initiatives?

Principally, there is large consent that the participation of stakeholders in the setting of rules is important, and accordingly the BSCI and the FWF both argue that they engage stakeholders in these processes (→ CH 7.2) (see also UN 2007b). The BSCI claims that it follows a ‘spirit of cooperation’, which includes dialogue and the ‘principle of fairness’<sup>68</sup> (BSCI 2007b:7). Similarly, the FWF argues that labour conditions can only be improved to the level of the ILO with the participation of stakeholders. The following quotes show that the BSCI, the FWF and the CCC all frame the participation of stakeholders as important:

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<sup>68</sup> The interests of those parties most affected by changes are kept in the foreground of any considerations and changes. (BSCI 2007b:7)

*CCC: If the intended beneficiaries<sup>69</sup> are not directly involved at all levels, including decision-making, real sustainable change will not be achieved. The recently published ETI impact assessment study also strongly supports the conclusion that NGOs and trade unions representing workers' needs, need to be actively involved (not just 'consulted'). (CCC 2007)*

*FWF: FWF believes that labour conditions can only be brought up to the level of the ILO standards in cooperation with institutions and organisations that have a direct responsibility for, or impact and influence on the labour conditions and industrial relations in the respective country<sup>70</sup>. FWF therefore seeks to co-operate with these stakeholders in production countries and aims to strengthen the local legislative and institutional structures in the specific county.*

*BSCI: The BSCI has conducted discussions with stakeholders since its launch in 2003. The exchange with governmental organizations, trade unions, business associations, NGOs, academia and others is important to include the experience and views from those who share our objective: the improvement of social compliance in supply chains. (BSCI 2009a:16)*

### 8.1.2 Why involve stakeholders?

It is argued that stakeholders provide credibility and legitimacy and the interaction with stakeholders can make legislative regulation more effective and more efficient.

#### Stakeholder participation: Independence, credibility and legitimacy

The FWF creates its credibility, legitimacy and independence by stating that “all important organisations that are dealing with labour problems in low-wage countries” include stakeholders into the decision-making process. These are business associations, trade unions and NGOs, who are represented in the *FWF Board* – the decision-making body of the FWF – with equal voting power (→ CH 7.2.1) (FWF 2008a:32; FWF 2009c).

Together these organisations are framed to ‘guarantee independence’<sup>71</sup> and “make sure that companies, who become member of FWF do not just do that to use the membership as a marketing tool” (FWF 2008a:34). A member supports this view on the FWF, arguing that the participation of NGOs provides credibility:

*Als Multistakeholder haben wir ja nun die NGOs mit im Boot. Also die unterliegen ja nun wirklich nicht der Gefahr der Käuflichkeit (B1).*

In addition, the FWF argues that the participation of stakeholders in the board when setting rules makes the whole initiative and its practice credible and legitimate:

*This broad participatory base in society gives FWF the credibility to perform its principal tasks, to verify whether affiliates and ambassadors effectively implement the Code of Labour Practices. (FWF 2009c)*

*This broad social base endows FWF with the legitimacy it requires to fulfill its tasks, making FWF a solid instrument by which members can undertake a socially responsible enterprise. (FWF 2008a:34)*

The FWF thus derives its legitimacy from the participation of company and worker representatives in its *Board* that many regard as representing the two opposing groups regarding labour-related issues. However, company representatives and NGOs from the production countries complain that they do not feel represented (→ CH 8.1.3).

<sup>69</sup> Workers and members of local communities, as the potential victims of human rights violations and as the intended beneficiaries of the whole process, are arguably the most important stakeholders and need to be involved at all levels and in all activities related to code implementation, if code implementation is to be successful and sustainable. (CCC 2007)

<sup>70</sup> These are: Business associations and manufacturers; Trade Unions and workers (company-level unions, union federations (sectoral unions) and confederations); NGOs that play important roles in civil society and can contribute to change in the field of labour, the position of women and communities; Governmental and semi-governmental organisations (labour inspectorate, ILO, chamber of commerce).

<sup>71</sup> “Our independence is guaranteed by a board in which leading organisations have a seat. These are companies from the garment industry (*Modint, Mitex*), trade unions (*FNV Bondgenoten, CNV*) and NGOs (*CSR Platform and Clean Clothes Campaign*).” (FWF 2008e)

### Stakeholder participation creates efficiency

Although the BSCI argues that the involvement of stakeholders is important, the power of decision-making in the initiative clearly remains with the member companies. Some argue that the BSCI is clearly declared as a business initiative where companies take the decisions (B16), and one member admits that this could be seen as one-sided:

*Was sie auch von ... unseren Initiativen sagen, wir seien einseitig, was teilweise auch so ist, weil wir es auch ganz klar als 'business-driven' deklarieren. (B23)*

Stakeholders are framed as useful for efficiency-oriented reasons, e.g., conducting dialogue, providing advice, highlighting another perspective on issues and starting projects. Members of the stakeholder board can make comments on the system, and these comments are taken into account ("finden Eingang") in the discussions and decisions of the BSCI (Berzau 2008:161). Basically, instrumental benefits of stakeholder involvement are emphasized, and not the advantages from a more political or discursive perspective that aims at mutually agreeing on decisions:

*The efforts of the BSCI need the support of stakeholders to be efficient and sustainable (BSCI 2009a:16)*

*The BSCI takes the feedback of stakeholders into account in the various projects the system undertakes. (BSCI 2009a:16)*

Similarly the 'constructive dialogue' with civil society aims at anticipating criticism or winning 'the support of societal groups'<sup>72</sup>. For instance, dialogue with politics is presented as successful in fending off mandatory rules in terms of corporate accountability:

*In order to demonstrate the engagement and motivation of European business, the BSCI invited – in cooperation with CSR Europe – Vladimir Spidla, European Commissioner for Employment, Social Affairs and Equal Opportunities to a meeting with senior representatives of BSCI members. During this occasion, Mr. Spidla pointed out that the Commission does not aim at new standards for social compliance. (BSCI 2009a:20)*

However, not only BSCI representatives but also other actors mention positive instrumental effects from including stakeholders. Both, the FWF and BSCI, emphasize that the interaction with stakeholders particularly in the production countries provides those who decide upon the rules with the local knowledge they need to effectively implement standards. This is seen as particularly important in the context of uncertainty and complexity in global supply chains: e.g. knowledge of the local context and taking into regard informal, flexible, and locally adapted solutions (FWF 2008d:22).

*Our experience teaches us that many social challenges can be better dealt with on the national level of a supplier country. Indeed local stakeholders have the necessary expertise about national laws and the respective political, cultural and economic environment to help finding concrete solutions. (BSCI 2009a:16)*

Particularly tacit knowledge gained from the participation of stakeholders is seen as improving the efficiency of implementing standards. For instance, a representative of the FWF (2008d) argues that CSR departments in Europe cannot design activities 'out of the blue', but instead must work in the countries where the problems occur and include local stakeholders. For example, if rules are set, it is helpful to have good inside knowledge about what problems local groups and particularly workers interpret as relevant, what local laws already exist in the area to cover these problems, how cultural aspects could

<sup>72</sup> <http://csr-news.net/main/2009/10/20/bsci-stakeholder-meeting-auditierungsfreie-zukunft/>, 1.2.2010

influence the implementation of the system etc. Local actors are seen as having a better knowledge on such issues than companies from Europe (FWF 2008a:32).

In sum, whereas the FWF aims at achieving credibility and legitimacy by including stakeholders into the setting of the rules, the BSCI aims at credibility and legitimacy by having dialogue with stakeholders and by becoming more efficient.

### **Transparency regarding the setting of rules**

Regarding legislative regulation, the CCC demands procedural transparency regarding the rules and the code (CCC-Merk 2008:5) and transparency regarding the companies' supply chains. This transparency shall help make the companies accountable for the standards. However, transparency about how decisions in a standards initiative are taken – e.g. by publishing the meeting minutes to understand the arguments – is not seen as relevant, since minutes then might be formulated very softly (N22). According to the CCC, transparency shall rather be achieved by including the 'relevant' stakeholders.

The BSCI argues "the system's remarkable transparency" provides "the greatest possible internal and public credibility" (BSCI 2009c:2). The internal transparency refers to the supplier database, while the public transparency most likely refers to disclosure of general system rules and aggregated audit results (CH 7.2.4 & 9.1.2). However, since published information does not enable a verification of the system, the CCC criticizes the lack of transparency regarding the suppliers and audit results (→ for audits: CH 9.1.2):

*BSCI ist nicht transparent: Die Namen der Lieferanten werden nicht genannt, Berichte über Auditsergebnisse von einzelnen Fabriken werden nicht veröffentlicht (Burckhardt 2010)*

While the FWF focuses on making rules and procedures transparent, it also does not disclose information regarding the supply chain or audits. The FWF defends why more transparency is not regarded as necessary for reasons of legitimacy or credibility. First, the "balanced" composition of the FWF board "shall guarantee independent and objective verification" (FWF 2002: 3-2) (→ CH 9.1.2). Second, too much transparency is regarded as problematic because the effectiveness is said to suffer from it, as, e.g., published reports are formulated more softly, and this way, the real problems might not be identified (FWF 2008b). The CCC criticizes the lacking transparency regarding supply chains, but not regarding audits in the FWF.

### **8.1.3 How to integrate which stakeholders into legislative regulation?**

While BSCI and FWF both argue that it is important to involve stakeholders in legislative regulation and that they do so, the opinions strongly differ regarding the following questions: *Which* stakeholders should be involved in the setting of rules and *how* should they be involved?

#### **Credible or legitimacy stakeholder participation**

The CCC and other NGOs particularly criticize that some business initiatives pay "lip service" to stakeholder involvement. In their view, few initiatives involve trade unions, NGOs or workers in "a meaningful way", i.e., actively involving them and giving co-responsibility instead of consulting (CCC 2007):

*The recently published ETI impact assessment study also strongly supports the conclusion that NGOs and trade unions representing workers' needs, need to be actively involved (not just 'consulted').*



*There is a fundamental difference between being involved in an advisory capacity, or being consulted, and being co-responsible. (CCC 2007)*

What then is seen as meaningful participation? The CCC regards the FWF and other MSI as ‘credible’ because companies and stakeholders representing the workers work together and each group has an equal share of the votes in the setting of rules: “Membership in a credible ‘multi-stakeholder initiative’ (MSIs) can also serve as a valuable step for companies in their efforts to improve their code compliance undertakings. These initiatives require that companies, unions, and NGOs work together to promote improved labour practices through codes and monitoring“ (Merk 2008:10).

The CCC, in contrast, criticizes the BSCI for not involving ‘credible’ stakeholders in legislative regulation: “(The BSCI) has consciously decided against involving trade unions and credible NGOs, even at the project or advisory level” (CCC 2007)<sup>73</sup>, and criticizes that NGOs can merely consult companies in the BSCI. According to the CCC this neither provides credibility nor legitimacy, as the rules end up favouring companies (N22). The BSCI, in contrast, claims that the system is credible, because it is transparent and because it involves stakeholders in Europe and in the producing countries (BSCI 2009c:2) (B16, B23).

Vice versa, some BSCI members criticize that they do not feel represented in the FWF. Some argue geographically, saying that it is too much a Dutch initiative that does not represent their own (global) interests. Others claim that they do not trust the FWF. They fear that due to the proximity towards the CCC (arguing that both are situated in Amsterdam) the FWF could leak ‘secret’ business information to the CCC, which will then be used for campaigns against them (B4, B6). This again is vehemently denied by the FWF, who places a strong emphasis on their confidentiality (FWF 2008b). In addition, some companies fear that in multi-stakeholder initiatives they give away the decision-making power to some other party, whereas they themselves lose influence (B16). One BSCI member argues that companies should keep on deciding, because eventually they must take the responsibility for their decisions by implementing standards, while NGOs can have utopian or economically unrealistic demands, because they do not have to discharge responsibility:

*Wenn wir ein gemeinsames Ziel haben, dann müssen wir auch gemeinsam entscheiden und Verantwortung tragen können. Und das können wir in dem Fall (i.e. FWF) nicht. (B23)*

*Wer übernimmt die Verantwortung? Das sind wir als Unternehmen. Die NGO als solche übernimmt jetzt zum Beispiel sehr wenig Verantwortung in einem solchen Prozess. (B23)*

Regarding the participation of the ‘right’ or ‘meaningful’ stakeholders, the BSCI argues that it has invited the CCC in 2004 to join the advisory board (today the stakeholder board), and in 2005 to take part in its annual stakeholder meeting. The CCC rejected both invitations to participate as a stakeholder, although it certainly would be a ‘right’ stakeholder to participate according to its own definition. Why did it reject participation as a stakeholder to the BSCI? It argues that it was not involved from the beginning and that its own participation in the stakeholder board might provide legitimacy to an organization that in overall it regards as inadequate: The CCC argues that the BSCI will

<sup>73</sup> The critique applies to the beginning of the initiative, where NGOs were not integrated, but in 2007 the BSCI has constructed the stakeholder board on an advisory level.

never adequately contribute to ensuring respect for worker rights (Merk & Zeldenrust 2005) (→ CH 9 & 10). It questions the existence of the BSCI overall and suggests that BSCI members should rather join an existing MSI. A CCC representative says that there is no room for ‘real’ participation, e.g. workers are not participating and the members of the stakeholder board cannot make any changes to the BSCI system and rules, but can only give advice (N20). The CCC further questions whether the BSCI takes stakeholder participation seriously: Although the BSCI has been claiming that it wants to exchange ideas and receive feedback on the system through interaction with stakeholders, it did not provide any answer to a 20-pages feedback on the system by the CCC (CCC 2007). In a nutshell, the CCC indicates that the way the BSCI tries to set up its stakeholder participation is not backed with upright intentions, and as a campaigning organization it fears co-option. The following quote from a CCC letter to John Ruggie<sup>74</sup> sums up this position:

*In our view, some type of formal representation for trade unions and NGOs in the governance structure of these initiatives is essential since the alternative, having corporations being solely responsible for the oversight, will ultimately mean that these initiatives will end as non-transparent, unaccountable, top-down structures. It will also mean that they can't evolve in the same direction as the 'soft law' multi-stakeholder hybrids you describe in your report. (CCC 2007)*

In contrast to the CCC, two NGOs have joined the BSCI stakeholder board, namely the US-based Social Accountability International (SAI) and the Dutch Fair Trade NGO Solidaridad. Why do NGOs join the BSCI stakeholder board? SAI has been cooperating with the BSCI from the beginning, and its SA 8000 is BSCI ‘best practice’ and recommended to members. The other NGO argues that it is aware of criticism against the BSCI and its shortcomings. They want the initiative to implement a living wage and move towards multi-stakeholder cooperation. However, they emphasize that the BSCI also has positive impacts, and refer to the large amount of members and the fact that BSCI is conducting capacity building free of charge in the production countries (N23). The interviewee questions whether the approaches of the different private standard initiatives can be compared. He argues that while the FWF puts emphasis on the management systems of the brands, the BSCI focuses on the management systems on the supplier level. He regards both approaches as important and not as mutually exclusive. Also representatives of the FWF argue that the BSCI and the own initiative are not exclusive approaches. In contrast, the own audits could be conducted by the BSCI, whereas the FWF would verify the approaches of its member company. However, the CCC argues that in practice so far only one out of more than 500 companies has joined both initiatives, suggesting that this idea of combining is not practicable. BSCI members that were asked why they do not additionally join the FWF often replied that it was too costly and that they do not regard this as necessary as the BSCI did good work.<sup>75</sup>

### **Participation of stakeholders from production countries**

Various NGOs claim that workers or their representatives from the producing countries should participate in private standards initiatives, also in the legislative regulation (CCC

<sup>74</sup> At that time John Ruggie was the UN Special Representative for Human Rights & Business and conducted a comprehensive three-year study on how business can improve human rights.

<sup>75</sup> Telephone interviews with around 20 BSCI members (November 2009)

2007) (N5, N9a). However, so far local stakeholders from the production countries do not have decision-making power regarding the rules of the BSCI and the FWF, even though they are, on the one hand, the intended beneficiaries and, on the other hand, those that have to implement the standards.

In the BSCI stakeholders from producing countries participate in a formalized way via dialogues at round tables (→ CH 7.2). This way the BSCI claims to integrate ‘the right’ stakeholders, as various stakeholders “engage in a constructive dialogue on social issues while at the same time receiving input from the BSCI” (BSCI 2009a:17). According to BSCI members, the experience with the round tables supports BSCI’s overall argument that mainly local stakeholders in the production countries are responsible for taking ‘action’ and implementing the standards (B16)<sup>76</sup>:

*Our experience teaches us that many social challenges can be better dealt with on the national level of a supplier country. Indeed local stakeholders have the necessary expertise about national laws and the respective political, cultural and economic environment to help finding concrete solutions. (BSCI 2009a:16)*

Additionally, BSCI argues that the round tables motivate governments to look stricter into laws (BSCI 2009a:16f) and that the members of these round tables work on concrete projects to tackle supply chain problems directly. Projects inside factories are favoured, arguing that issues that are not directly connected to factories (e.g. supporting trade unions or pushing for higher minimum wages) should be done by local politics; the latter should be settled in a local dialogue between local stakeholders and the government. While the BSCI argues that the developing countries’ governments should deal with such issues, it partly engages in such discussions through the local round tables. However, when 12 large brands that are sourcing garments from Bangladesh wrote a letter to the Prime Minister urging her to set up a system that annually reviews wages, BSCI did not sign the letter.

While the FWF claims to involve local stakeholders from the production countries in their partner networks in various activities, local stakeholders complain that they are not integrated properly. Stakeholders from the local partner networks are consulted regarding the FWF policies, they draft country reports, handle complaints and are involved in worker trainings. The networks are informal, which is regarded as advantageous. Due to the differences in the countries in which the FWF works there are no fixed rules by which FWF selects members for the partner networks. Instead, the verification staff talks to different international and local actors in each sourcing country in order to identify possible partners for the network (FWF 2008d:3f). When selecting these organisations a “guts-feeling” and a ‘trial-and-error process’ drive the selection. This way some projects were started with various potential local partners, whereas some partners were left disappointed. For instance, one local NGO claims that they want to start a campaign against some MSI like the FWF and the FLA, because they do not get anything in return for their efforts – neither gratitude nor projects (N5). In defence, the FWF argues that it has send a questionnaire to 15 partners in 10 countries in 2007, and most were not interested in participating: “Many partners from the South do not want to participate more strongly, because they do these tasks only alongside, and because they have limited

<sup>76</sup> <http://csr-news.net/main/2009/10/20/bsci-stakeholder-meeting-auditierungsfreie-zukunft/>, 1.2.2010

resources – but there were also other answers” (FWF 2008b). Although the FWF claims that they do not exclude anyone, a selection of 15 partners in 10 countries certainly excludes many.

In addition, the FWF argues that they need to work effectively with the local organisations, and says that they demand quite a lot from them. Commitment, flexibility, independence and particularly trust are seen as relevant in the networks: The FWF and the factory workers must be able to trust the local organizations that cooperate with the FWF (FWF 2002:5-2). For instance, they must be able “to do something for us before any formal contract is written” (FWF 2008d). The flexibility that is required in the business as issues may suddenly pop up and then quickly have to be managed, makes it more difficult to find partners that are willing to work with the FWF for a longer time on an ad hoc basis. As an interviewee illustrates: “You never know when the first complaint will arise, how many there will be, how long it will take to solve them” (FWF 2008d). The need for flexibility helps to select the partners that are ‘really committed’ and really interested in the issue and not just in funding. However, stakeholders are not allowed to be too committed, e.g. active in campaigning, because this would limit the FWF members’ trust (FWF 2008d). In summary, in line with the ‘developmental approach’ of the FWF, the process of finding local partners is not easy and regarded as a learning process of ‘mutual adaptation’, which rather takes place on the informal level in personal interaction and not in formal meetings between corporations and their stakeholders (FWF 2008d:20):

*Social dialogue doesn't happen at the formal negotiating table. It happens at the personal contacts and the negotiating table finalizes what has been done before. Is there no networking in which people interact, a formal negotiation will never get any results, which is the big difficulty in countries like India or Bangladesh that are so polarized that people will never informally deal with each other, unless they are trying to bribe each other. So these partner networks, we are still doing them, because I guess, we have to be very very patient. ... they offer a possibility for groups to have a voice and to get into contact with others. (FWF 2008d:20)*

Having said this, the FWF has made the experience that local trade unions are little flexible in the cooperation (FWF 2008d):

*There are at least eight or nine recognised trade unions in Tirupur. And we told them, you always complain that the brands don't contact you, but you do not evolve. But you cannot expect them to contact eight or nine trade unions. So you should structure yourself and select at least three representatives that can then be the main contacts for the brands. And then you will see that brands will much easier be in contact with you. But they were never able to decide on that. They decided (laughs) there will be a representative committee with all of them. (FWF 2008d)*

Despite the efforts the FWF undertakes to look for the right local partners, some local NGOs criticize that they are not integrated properly, e.g. that they are not provided with important information (→ also compare chapter 9.3). Accordingly, some NGOs from producing countries complain that they feel ‘used’ by the FWF because they have spent time on supporting the FWF, without seeing any impact or being included in projects (N5). However, due to the heterogeneity of opinions in the global context it is seen as difficult to find representatives of local communities that represent all workers in the legislative regulation of such an initiative and/or to agree on a common position, if the stakeholders are too diverse:

*Since the network will be a heterogeneous body, common positions may be difficult to define; moreover, since the network is not necessarily representative of local communities, common positions would have limited significance. (FWF 2002: 5-2f)*

#### 8.1.4 Summary and conclusions

There is a large consensus regarding the claim that a private standards initiative can only be credible and effective if stakeholders are involved. However, particularly in the context of global production networks where stakeholders are embedded into totally different local contexts, it is by far not consensual which stakeholders are the *right* ones to involve into legislative regulation and how they should be involved *meaningfully*. I briefly sum up the most contested issues:

- **How do stakeholders participate in legislative regulation?** Stakeholder participation in legislative regulation can be differentiated between formal participation in decision-making processes and informal participation in the form of consulting and networking. In both forms of participation trust plays an important role. The BSCI argues that informal participation of stakeholders makes the initiative more efficient and effective and that this creates credibility and legitimacy, while companies keep the decision-making power. The FWF formally includes stakeholders in the decisions, and argues that this form of participation creates credibility and legitimacy for the whole initiative.
- **Formal participation** in decision-making can be seen as a more political concept of participation that can generate responsibility and accountability for implementing standards (→ CH 3.1.4). Only in the FWF stakeholders from Europe participate formally in the decision-making process. The BSCI does not want to give stakeholders too much power, fearing this might generate too high demands from the member companies that are not compatible with the ‘economic reality’. A formal participation of stakeholders from production countries is seen as going too far for both initiatives.
- **Informal participation** is more effectiveness- and efficiency-oriented ‘consulting’/‘giving advice’. It takes place in the FWF and the BSCI in Europe and in the production countries. In the eyes of most stakeholders it does not generate accountability. Informal participation aims at learning and generating knowledge regarding an efficient and successful implementation of standards. It is argued that this is useful to gain the locally available knowledge in order to more successfully implement standards – but without giving away the ‘steering wheel’ (→ CH 3.1). Informal participation is partly formalized through a stakeholder board with concrete members or by round tables or local partner networks (e.g. BSCI). Even though this kind of stakeholder participation mainly aims at efficiency and effectiveness of standard implementation (BSCI & FWF), the BSCI also claims that it provides credibility and legitimacy – which is doubted by the CCC. Formalized informal participation can provide pragmatic or cognitive credibility – whereas it does not create a more political legitimacy. Interaction at ‘Round Tables’ is a very informal way of identifying relevant issues, the stakeholders from the FWF partner networks are also involved in formulating country studies, which are a benchmark for the audits that also involve local groups (→ CH 9). Having said this, some stakeholders

from producing countries complain that they are not involved sufficiently in private standard initiatives (→ CH 8.1.3).

- **Limitations:** One main problem regarding the participation of stakeholders is seen in the heterogeneity and diversity of stakeholder viewpoints and in lacking trust. The business side, on the one hand, is sceptical to involve stakeholders representing the workers too much, fearing that they misuse the information or define rules that are seen as too idealistic and unrealistic from a company perspective. The FWF, however, also does not involve local NGOs that are too close to campaigns. Sceptical NGOs, on the other hand, want to decide upon the rules, fearing that companies alone decide on rules that only benefit the companies. Whereas the BSCI believes in a one-size-fits-all approach to managing the problems, the FWF is rather conscious about the differences between firms and NGOs.
- **Transparency:** Processes and rules are made transparent by both initiatives. The CCC demands that companies make their supply chains and their audit reports transparent, what neither the FWF nor the BSCI do for the public. However, the FWF argues that due to being a multi-stakeholder initiative these issues need not be transparent, because business and stakeholders agree on policy decisions regarding the rules. While the BSCI argues to be very transparent, it speaks of a different transparency than the CCC; one that is unlikely to generate accountability.

## 8.2 Codes of conduct: Contesting wages

There is a larger discourse regarding the payment of wages in global supply chains. Two suggestions reflect the main opposing viewpoints: Most companies (including BSCI) argue that factories in developing countries should pay national legal minimum wages<sup>77</sup> (MW), whereas most civil society actors (including the CCC and FWF) claim that producers must pay living wages (LW) and that lead firms must take the responsibility to demand these (→ CH 7.2.2). The following chapter presents the main arguments of both sides and points out why and how the wage issue is contested.

### 8.2.1 National minimum wages versus 'living wages'

Governments in producing countries set **national minimum wages**. The BSCI, its members and many suppliers argue that by paying these minimum wages they act according to the national laws that were set by democratically legitimized governments. Why should they be responsible for paying more, buyers and suppliers ask (S5, B18). One auditor explains how producers argue: "The government has decided this, it has decided everything. So, who are you to tell me that minimum wages is low?" (A1).

Whereas many suppliers claim that the workers are happy with their wages, the BSCI (2009b) acknowledges that "in some developing countries, workers do not receive the minimum legal wage", that the "minimum wage is often not enough to cover basic needs

<sup>77</sup> Minimum wages are settled by the government, sometimes in a tripartite body with the participation of government, worker and industry representatives. In some areas the industry sets wages that are higher than the legal minimum wages. Some CoC demand that MW or industry wages shall be paid, whatever is higher.

of workers and their family”, and that this can have negative effects on the workers, e.g. cause overtime and child labour. However, the BSCI says that the national governments should deal with this problem and not the buying companies: “As a consequence, it (minimum wages) should be regularly revised by local governments to reflect the increase of cost of basic consumption products” (BSCI 2009b). Similarly, a Tchibo representative argues in an open letter that national governments must adapt:

*Wie sollen einzelne Handelsunternehmen bei der Vielzahl ihrer Lieferanten sicherstellen, dass die – ohne gesetzliche Verpflichtung – auf ein Existenz sicherndes Niveau angehobenen Löhne auch tatsächlich an die Beschäftigten ausgezahlt werden ... Die Lösung kann nach alldem nur darin liegen, dass die Mindestlöhne in Entwicklungsländern durch die nationalen Gesetzgeber auf eine Höhe festgelegt und regelmässig angepasst würden, die unter der Brücksichtigung örtlicher Verhältnisse Existenz sichernd wären. (Tchibo 2008:5)*

The BSCI Code “encourages” producers to adequately compensate the workers to meet their needs, and the BSCI recommends that suppliers with good compliance results shall get SA 8000 certified, which includes paying a living wage. In a nutshell, the BSCI and its members take responsibility by asking governments to settle the minimum wages high enough and asking suppliers to pay workers adequately.

In Bangladesh in January 2010, 12 large brands and retailers (*HM, Tesco, Walmart, Ikea, Nike* etc.) urged the Prime Minister of Bangladesh, Sheik Hasina, in a letter to urgently adapt the minimum wages to the increased costs of living. While two BSCI members signed the letter, the BSCI as a group did not sign it. The BSCI argues that it did not know about the letter<sup>78</sup>, despite its involvement through the round table.

In contrast, the FWF, the CCC and other civil society groups and local consultants argue that legal minimum wages are too low and make it impossible for workers to live a decent life. They therefore demand that lead firms require so-called ‘living wages’ (A1, A3, TDS711)<sup>79</sup>. The *Asian Floor Wage* proposal sums the problem up as follows: “While most Asian governments set minimum wages, these typically fail to provide enough income to maintain a family of four above the nationally defined poverty level” (Merk 2009:14). The CCC estimates that the legal or industrial minimum wages in most garment-producing countries are around half of a ‘typical’ estimate of a living wage and often do not suffice to nourish even one person (→ CH 7.2)<sup>80</sup>. Not paying a living wage “amounts to a serious violation of basic human rights” (Labour Behind the Label 2006; Merk 2009)<sup>81</sup>:

*Unfortunately, many companies still refuse to seriously address the issue of a living wage, even if it is included in their code. This is unacceptable precisely because a living wage is a human right (Article 23, paragraph 3 of Declaration of Human Rights) and production can never be ethical if workers cannot meet their most basic needs. (Merk 2008:8)*

Similarly, an auditor complains that minimum wages do not reflect the socio-economic reality into which the factories are embedded, as they do not consider that usually two or more people in one family have to live of one wage (A3). For example, women in many areas in South-Asia are not employed in a factory anymore once they are married or when

<sup>78</sup> Personal communication with BSCI (April 2010)

<sup>79</sup> Interviewees in India argued this way, but particularly those in Bangladesh, where wages belong to the lowest worldwide (→ CH 2.1)

<sup>80</sup> CCC 2009:30, <http://www.labourbehindthelabel.org/campaigns/urgent/archive/41-bangladesh/128-how-low-can-you-go-support-minimum-wage-increase-in-bangladesh?start=1>

<sup>81</sup> <http://www.labourbehindthelabel.org/campaigns/urgent/archive/41-bangladesh/128-how-low-can-you-go-support-minimum-wage-increase-in-bangladesh?start=1>

they become older than 30. Considering this, common calculations of a living wage should be based on a household of four people, the auditor argues. The problems of working women and families with low wages are often illustrated by presenting stories of particular workers. For instance, the textbox “Meet Neelam from India” (Merk 2009:17) in a publication by the Asian Floor Wage Campaign explains the financial situation of these women.

Some claim that low minimum wages are a structural condition that results in further labour rights violations, which is similar to what Young presented as structural injustice (→ CH 2.4). For instance, most local interviewees argue that workers will not work in a factory that does not allow them to work overtime (A2, A3, S4, S5, B20). If the wages would suffice, they claim, workers would voluntarily reduce overtime (A3, N2, N9): “The workforce wants overtime, because what you pay them for normal wages is not enough. It is as simple as that” (N2). Vice versa, producers who employ workers only for the regular eight working hours a day have experienced that the workers will continue working at a different factory after their regular shift; and they might not even come back if they prefer the working climate in the other factory, factory managers complain (A6, S6, S8, B20). Suppliers also present overtime as a bad option for their business, because overtime requires the payment of overtime wages, which are 100% higher than the normal pay in India. They therefore argue that they try to prevent overtime, but are confronted not only with the workers’ demands, but also with those of the buyers, who are often not willing to pay more, if the suppliers implemented living wages (S4). NGOs and auditors agree that workers want to work overtime, but stress that they do not do it voluntarily, but that the structures force them to do so.

One major problem connected to living wages is who shall define it and how high shall they be. Stakeholders and members criticize that six years after the launch of the FWF, a wage ladder has not been published for India or Bangladesh (B26). Additionally, it is criticized that the FWF communicates that they aim at implementing living wages, whereas the practice of implementation is still far from the objective (N23): So far few members have implemented a living wage, and one FWF member argues quite modestly that the first step is to achieve the minimum wages, only then they try to implement a living wage<sup>82</sup>. So if hardly any FWF member is implementing living wages in its factories, what is the difference to codifying minimum wages as requirement into the Code of Conduct? The FWF claims that including a living wage in the Code of Conduct “means that buyers can (be made to) take responsibility for the consequences of their pricing policy and some counter pressure can be executed to the continuous pressures on suppliers to decrease prices” (FWF 2009f). Furthermore it claims that the “FWF is in the process of substantiating its approach on payment of living wages. After further guidance has been developed for affiliates to move forward on this issue FWF will formulate additional recommendations with regard to this labour standard” (FWF 2009g).

### 8.2.2 Struggles over minimum wages in Bangladesh in 2006

<sup>82</sup> Personal communication (FWF member 6.4.2009)



This chapter presents the struggles about the legal minimum wages in Bangladesh in 2006 to highlight some backgrounds from the country and the arguments connected with nationally fixed minimum wages. Bangladesh is an interesting case because the country's economy is highly dependent on the export of cheap garments; therefore the local industry and the government prevent wages from being raised too much, usually referring to the need to be competitive.

In 1994 the legal minimum wage in Bangladesh was set at 930 Tk (\$14)<sup>83</sup>, and has not been increased until workers began striking at large scale in 2006. Mainly between May and October 2006 massive and partly violent struggles were fought about the national minimum wages. On the one hand were workers and their representatives, such as workers' organizations (WO), trade unions (TU) and international organizations. On the other hand were factory owners, mainly represented by the *Bangladesh Garment Manufacturers and Exporters Association* (BGMEA) and by some other industry associations in Bangladesh<sup>84</sup> (TDS724)<sup>85</sup>. The demands of the two opposing groups strongly varied. According to *The Daily Star* the events and demands were as follows: Most of the time between May and October 2006 the workers and their representatives demand an increase of the legal minimum wages from 930 Tk to 3.000 Tk. Many threaten with strikes, if this is not fulfilled – whereas the factory owners offer 1.300 Tk at most<sup>86</sup>. The following examples illustrate the main arguments of worker representatives at the time of the struggles in 2006. Most arguments refer to the discrepancies between the poor workers and the rich factory owners:

- Local trade unions and workers argue that the minimum wages are far too low to be able to survive, while factory owners are making enormous profits.
- *Labour behind the Label* (LbL) says that whereas factory owners and international buyers have been profiting from the Ready Made Garments (RMG) industry, workers “subsidize” the growth of the industry and the profits of the owners. They conclude that minimum wages should rise (Labour Behind the Label 2006).
- At a meeting of the communist party an invited economist says that owners enjoy the lion's share of the profit from the RMG sector<sup>87</sup>, which has grown enormously since 1994, when the minimum wage was set to 930 Tk (from US\$ 1,5 Billion to US\$ 7.04 Billion).
- Neil Kearney (General Secretary of the International Textile, Garment and Leather Workers' Federation at that time) argues that there is an enormous mismatch between the workers in poverty and the factory owners in wealth: “While local factory owners are living in palatial-style mansions and being driven around in the biggest and most

<sup>83</sup> [www.wechselkurs24.de](http://www.wechselkurs24.de) calculated for the 1.4.2006

<sup>84</sup> For instance: BKMEA= *Bangladesh Knitwear Manufacturers and Exporters Association*, FBCCI= Federation of Bangladesh Chambers of Commerce and Industries, BCI=Bangladesh Chamber of Industries

<sup>85</sup> TDS = The Daily Star, the main English speaking newspaper in Bangladesh. The number refers to the issue. The following issues were analysed for this chapter: TDS713, 717, 724, 729, 758, 764, 806, 807, 815, 817, 818, 819, 820, 834

<sup>86</sup> Tk 3000 will add up to 4.850 with house rent and other allowances according to TDS764.

<sup>87</sup> Prof. M M Akash, see: TDS731

stylish vehicles, the workers who produce the source of this wealth are living in poverty and are often denied the legal minimum wage of US\$25”<sup>88</sup>.

Between May and October 2006, the struggles about working standards and especially the MW in the RMG sector in Bangladesh continue with varying intensity. Some days the situation escalates and the police arrests demonstrators, e.g. when fire is set to factories, road blocks are set up, or cars and shops are violated.<sup>89</sup> The Daily Star reports: “Black Tuesday for industry. RMG labour violence spreads to Dhaka; 1 killed; over 250 factories vandalized, scores torched; 200 vehicles ransacked; 100 injured”<sup>90</sup>. On May, 31st 2006 a tripartite Minimum Wage Board (MWB) is formed to recommend a new wages scale within 90 days. On October, 22<sup>nd</sup> the tripartite group agrees on a minimum wage of Tk 1.662. This includes basic salary, house rent and other allowances for entry-level workers, and local worker representatives say that it accounts for Tk 1.110 only for the basic salary without benefits (TDS 850). The two workers’ representative on the MWB comment this agreement the following way (TDS 850): Nazma Akhter of the NAJAW Foundation<sup>91</sup>, who had rejected an earlier proposal in September and kept demanding Tk 3.000, declares that 40 workers’ organizations behind her support the demand of Tk 1650-1800. She concludes not to have any option but to accept the offer. Zafrul Hasan argues that the interests of the workers are not protected by the agreement, but that he finally accepts it, as otherwise there would be more uncertainty for the workers. Workers’ organizations that are not involved in the Minimum wages board reject the agreement. They still demand Tk 3000 and continue protesting without success<sup>92</sup>.

In 2008, when Bangladesh was ruled by a military-backed regime, worker organizations again claim that the labour law has still not been implemented properly. Now they demand Tk 4.500 and criticize the total ban on trade union activities in the last 18 months. In September 2008 RMG international buyers on the MFA Forum Bangladesh urge the government to “urgently convene the Minimum Wage Board for the RMG workers and introduce an annual review of their wage levels”. They “also called for lifting the restrictions on trade union activities invoked by the emergency power ordinance and implementing a framework for mature industrial relations based on tripartite agreements, ILO conventions and national labour laws”<sup>93</sup>. However, until May 2010 wages have not been increased. In 2010 the labour wage committee was again called together to discuss the issue, and there were various demands from outside to raise the wages.

### 8.2.3 How living wages are contested

The following statements reflect a few central arguments by the different actors involved

<sup>88</sup> F2F04082008

<sup>89</sup> Spiegel ONLINE, 23.05.2006, PROTESTE IN BANGLADESCH. Textilarbeiter zünden Fabriken an (<http://www.spiegel.de/wirtschaft/0,1518,417813,00.html>)

<sup>90</sup> TDS705; In the following I will more often refer to the Newspaper “The Daily Star Bangladesh” as TDS. The number expresses the number of the issue. See [www.thedailystar.net](http://www.thedailystar.net)

<sup>91</sup> NAJAW Foundation is a trade union in Bangladesh

<sup>92</sup> TDS832, 841, 842, 845, 846, 847, 848, 849, 850, 853, 858

<sup>93</sup> <http://www.thedailystar.net/story.php?nid=43306> (2008-06-29) (TDS2008-09-17) <http://www.thedailystar.net/story.php?nid=55145>

about why living wages are not demanded or implemented:

- So far most factories do not pay minimum wages – once this level is achieved, living wages can be demanded;
- Buyers have no power to demand the payment of living wages;
- There is no accepted definition of living wages;
- The global competition does not allow implementing living wages.

These arguments and how they are criticized are presented below.

### **We first need to achieve minimum wages before we strive for living wages**

Many argue that it is already difficult to assure that suppliers pay legal minimum wages, and some conclude that this makes living wages too high a target.

There are many examples that workers are underpaid. One auditor, for instance, complains that employers subtract money from the wages if targets are not met, even though this is illegal (A3). Another auditor criticizes that apprentices get less money than learned employers, and often this is lower than the minimum wage<sup>94</sup>. One auditor mentions that the whole concept of a minimum wage doesn't make much sense if companies employ an 'apprentice' and pay him 70% of the minimum wage, or if employers extend training periods longer than they should – he suggests that factory owners are looking for ways to reduce costs (A5). So the local implementation of minimum rules is often to fulfil this rule. Before this background, a BSCI member argues that a lot is achieved if all suppliers paid minimum wages, and therefore obliging them to implement living wages is striving for too much (B16). The situation of migrant workers aggravates the wage-related problems, because they often accept very low wages or other ways of payment (compare Box 9).

#### **Box 9: Migrant workers and the Sumadagli scheme in Tirupur**

Labour migration is prevalent in many parts of developing countries and it worsens the situation that workers accept any wages. There are pull- and push-factors. On the one hand, suppliers claim that there is a lack of workers in the factory areas (A2). In Bangalore, e.g. factory managers are looking for young unmarried girls in the rural areas 200 km away and bring them to the factory to work. The factory provides housing, and takes 'a small amount' of their salaries for that. One manager (S2) argues that they also bring the workers for philanthropic reasons: "because these people need the jobs more. So his is the main reason why we are persisting with that" (S2). He claims that they train and empower them, knowing of the risk of unionization that workers complain that they bring girls from outside Bangalore. Eventually, these migrant women have the opportunity to work on a supervisory level, where they earn more (S2, S8).

On the other hand, suppliers and local NGOs argue that migrant workers also have a motivation to migrate to the industrial area to find work. In this context suppliers, NGOs and also buyers argue that migrant workers try to earn as much as possible when they work, and thus are not interested in overtime regulation. But there is also a high turnover, i.e., workers go back to their native places, if they have collected enough money, during harvest time or during religious festivals in their native places (A2, N7, B20). A local NGO argues:

- *These migrant workers migrate from their villages into the cities for a period of seven or eight months. And for the rest of the time they want to spend in their family, they want to, you know, do agriculture and all that stuff. They want to earn as much as possible. Secondly their living conditions. Because they do not have proper living conditions. So sometimes the conditions in the factories are much better than where they live. So they want to spend much more time in the factories. And this is actually due to Bangladesh also. (N7)*

In and around Tirupur a local wage scheme for migrant workers has been emerging, known as the 'Sumadagli scheme' (S6, N3, N9a). This scheme brings girls between 15 and 18 to Tirupur to work in the factories and live in hostels close to the factories or within the factory premises often for three years, after which they are promised a lump-sum for their dowry. After this time many go back to their rural villages and marry. Local employers present the scheme as the local benevolent practice and an opportunity for the rural women to earn something (S6). Local NGOs criticize that the Sumadagli scheme puts the female workers into a power relationship and exploits them, even if it might sound attractive

<sup>94</sup> In Bangladesh apprentices were paid 1.200 Tk (18\$) instead of 1.662 Tk  
<http://de.finance.yahoo.com/wahrungsrechner/convert?amt=1664&from=BDT&to=USD&submit=Umrechnen>

to the workers. The girls are not being paid according to the tripartite Tirupur wage agreement, they do not know of the local laws and of their rights, but they are kept inside the factory compound, where they are available 24 hours a day, their mail is controlled by the management, they do not have access to organizations that represent their rights, and there is no specific law for this particular age group of 15-18 – they go after the apprenticeship act, although they could go under the bonded labour act (N3, N4b). Furthermore, the wages are very low, do not include provident funds or labour-related benefits, and the employees deduct 40% of the wages, whereas suppliers say they only deduct a small amount (N9a). After an agreed time – usually three years – the workers are promised a lump sum for their dowry. A local NGO says that it often happens that the girls are fired after 2,5 years, without having any chance of receiving their lump-sum that they should get after three years (N9). A coalition of local NGOs – the *Tirupur People's Forum* – criticizes that scheme and questions how workers in such schemes can possibly live during that time and that the young girls are exploited (N3, N9): “they are being exploited in terms of hours of work, in terms of wages, sometimes there are cases of reported of child abuse, sexual abuse also” (N2).

### **There is no universally-accepted definition of living wage**

Companies that do not pay living wages also justify their practices by referring to the fact that there is so far no agreement on the height of living wages. One month after the Asian Floor Wage campaign was launched, the BSCI stated a ‘BSCI position on wages’ (BSCI 2009b) in which it writes that so far no “universally-accepted definition of living wages” has been accepted: “Things become more complicated when trying to define how a living wage should be calculated, what the size of an average family is, and how much discretionary income is needed. Many definitions, approaches and methodologies have emerged over the last decade but none is accepted with unanimity” (BSCI 2009b). Similarly the FLA claims that they refrain from using living wages because they are concerned about definition, measurement and monitoring of living wages (MSN April 2008:5f).

Indeed, the question, what is a living wage, is heavily contested, and this is why many actors that support a definition of *living wages* agree on the wage ladder approach. But even with this wage ladder approach it seems difficult to define what constitutes a minimum wage, as in the case of the FWF (→ CH 7). Due to these problems the British NGO *Labour behind the Label* (2006)<sup>95</sup> urges that companies shall not take such problems as an excuse not to implement a living wage. Also, the argument by the BSCI that no living wage is accepted with unanimity seems like an excuse, considering that it also recommends ‘good’ suppliers to get SA 8000 certified, in which a definition of a living wage is used. The FWF argues that due to the lack of a generally acknowledged definition of living wages, this standard “can only be an aim which we try to achieve with our members” (FWF 2008c).

The CCC proposes two different ways of how decent wages should be fixed. One is “good faith negotiations and collective bargaining between workers and employers within a mature system of industrial relations” (Hearson 2009) – i.e., a form of input legitimacy. The second is to base the wages on the basic needs (Merk 2009). In the ideal form both systems are combined. However, the CCC does not specify how this ‘mature system of industrial relations’ and the ‘good faith negotiations’ should look like. For instance in Bangladesh, a tripartite body of government, worker representatives, and employer representatives negotiated the legal minimum wages. Formally the constellation should be a basis for ‘good faith negotiations’. However, the CCC member *Labour behind the Label* (2006) criticized the resulting wages for being below 1\$ a day, i.e. workers are in

<sup>95</sup> In search of a living wage (Thursday, 01 November 2007 17:28), online resource: <http://www.labourbehindthelabel.org/background/rights/living-wages> (10.3.2010)

absolute poverty. This problem seems to be particularly large in Bangladesh, since some worker representatives complain that the government cannot be the legitimate body to set minimum wages<sup>96</sup>, some worker organizations demand a reform of the minimum wage board, since it did not manage to bring about the ‘necessary’ changes.

### **Setting through living wages requires power in the supply chain**

Some buyers in Europe, who are proponents of minimum wages, argue that they alone have no or only little influence on the wages in a producing country, and thus cannot demand other wages (B18, B22, B24) (Tchibo 2008). Similarly, the ETI argues that “retailers cannot improve the wages of workers in far-off countries on their own”.<sup>97</sup> This is maybe reflected in the practice – although the ETI, FWF and the WRC follow a living wage approach, many argue that it is difficult to implement it and that so far there has not been much progress.

Realizing these difficulties, some local NGOs do not understand why buyers do not come together and put pressure on the local industry association to raise the minimum wages, what they see is possible, if the buyers wanted it (N2, N3). They criticize that buyers say they have little power in the supply chain as a tactical argument, knowing that no one would make the first step, because they fear the costs.

Having said this, a typical argument of the CCC is that introducing living wages does not cost much, because the labour costs are only a small part of garment production (see below). The FWF proposes that individual solutions need to be found with each company when paying living wages – for instance, a buyer could transfer the differential to a living wage for each T-Shirt to a bank account from which the workers are paid directly (FWF 2009e).

### **The global competition makes it impossible to increase wages**

Buyers, producers and governments argue that the global competition and the flexibility in sourcing makes it impossible to set or pay living wages – particularly because various actors fear the ‘threat of capital relocation’: “The persistent threat of relocation has become a powerful tool to prevent workers from organising unions and demanding decent wages” (Merk 2009:30) (→ CH 10.1). Governments fear that buyers might source from another country, if the wages in the country are too high – thus the CCC argues that they set the wages according to the needs of the companies instead of the needs of the workers (Hearson 2009): “As a result, governments seek to lure business by offering tax reductions, exemptions from national labour laws, or freezes in the legal minimum wage” (Merk 2009:30). Similarly producers fear that they cannot meet the buyers’ price demands, if they pay living wages, and that buyers might relocate their orders to a cheaper factory, if they demand a higher price. And finally brands fear that customers might move to other shops and brands, if they get too expensive, e.g. because they introduce living wages (B22, B23b).

The problem can be regarded as a collective action problem in a situation of ‘shared responsibility’ between suppliers/producers, buyers/retailers and customers in the supply

<sup>96</sup> <http://www.labourbehindthelabel.org/background/rights/living-wages>

<sup>97</sup> <http://www.ethicaltrade.org/Z/lib/2007/09/living-wage-eti/index.shtml>

chain (→ CH 2.4). Basically, if workers shall receive higher salaries, this money has to come from somewhere, i.e. customers, buyers or producers. In a competitive situation no one is willing to pay more. The BSCI uses this dilemma – what it calls “no clear responsibility to pay the living wage” – in a strategy to justify their agreement on minimum wages. Below, I examine the arguments of buyers and producers in more detail.

BSCI members and some other companies argue that it is impossible to pay increasing wages in a tough competition, when competitors do not pay living wages, as it would endanger their international competitiveness. The quote by Tchibo can be seen as representative for many other companies:

*In einem knallharten Wettbewerb um die besten Preise lassen sich diese Kalkulationsmehrkosten auch nicht einfach an die Endverbraucherinnen und Endverbraucher weitergeben, jedenfalls dann nicht, wenn Wettbewerber ein vergleichbares Produkt ohne entsprechende Mehrkosten im Wareneinstand und schon allein deshalb günstiger anbieten können. (Tchibo 2008:5)*

The FLA supports this argument, and its president argues that wages cannot be calculated, but that the ‘business realities’ – i.e. competition – have to be taken into account:

*I am personally opposed to a ‘living wage level’ arrived at through research, since it completely ignores the factors that collective bargaining takes into account such as the ability to pay based on prevailing business conditions. (MSN quoting FLA’s president van Heerden 2008)*

The consequence of this claim is that human rights have to be adapted to the prevailing business conditions, which runs counter the original idea of human rights. The CCC argues that the producers’ ability to pay workers also depends on how much buyers pay for their products, whereas others refer to the productivity of the factory (→ CH 10).

How do producers argue? To understand the producers’ perspective, it is necessary to note that the wages are often by far the highest running costs a factory has to pay. A factory in Bangladesh with 1.000 workers paying a low 2.500 Tk per worker/month that wants to implement a living wage suddenly has to pay double costs in average. This increases his monthly costs by 2,5 Mio Tk (26.000 Euro). There are three possibilities where this money can come from, if living wages are paid to workers: (1) Producers cut their own profits, (2) producers cut their own profits, but at the same time try to increase the own productivity to again increase his profits, (3) buyers pay a higher price for the products.

Many producers argue that in case the national minimum wages are increased to a level of living wages orders will move to other countries, where no living wages are paid, with adverse effects on the garment sector in the whole country. In Bangladesh the industry has tried to defend its position by painting a threatening picture regarding the future of the country with even more adverse effects on the workers. In the debate regarding the national minimum wages in 2006, factory owners in Bangladesh argue that “the garment sector should be kept ‘above politics’ and the recent situation in the sector should be judged from a realistic point of view” (TDS 724). Factory owners have threatened that the competitiveness of the whole Bangladeshi RMG industry will suffer, if the national minimum wages are increased too much. Before accepting the MW of Tk 1.662, they had argued that wages could not be raised to more than Tk 1.300, and that up to 70% factories will need to close down, if minimum wages were set at the level of the workers’ demands

of 3.000 Tk (TDS 713, 722, 782). The President of a business association warns of saving RMG from ‘ruination’ and the President of a second association even argues that the entire economy will collapse “if a minimum wage is fixed in the present competitive business atmosphere”. In the context of the international competitiveness owners present the dropping of quota to China as a major problem, and envision the dropping of all quota as a major problem to Bangladesh: “Put forth our post MFA phase-out competitive scenario that has reduced us all to a state of complete and open competition that demands the absolute minimum” (TDS815, 722). Similarly the BGMEA President says that he does not question the ‘rationale’ behind the workers’ arguments, but regards too much increase as not realistic, if the industry shall survive (TDS 815). All arguments are linked to the relevance of the RMG sector to the whole Bangladeshi economy – around 80% of export earnings are from the RMG-sector – and a picture of the economy breaking together as an effect of too much rise is created:

*There will be a multifaceted effect in the society with over two million workers losing their jobs and all the related industries and business sectors like bank, insurance, transport, accessories, and ports facing a debacle. (TDS724)*

The BGMEA President further argues that factory owners in his industry have a hard life and do not earn much (TDS 815): “the truth is that a factory today normally does not earn even 3-4% as net profit” – this claim stands in stark contrast to what others say. He is particularly concerned whether the 30% factories that survive on subcontracting can stand an increase in minimum wages. In addition, BGMEA and BKMEA say that increasing the minimum wages would lead to increasing all other wages, which would again lead to problems regarding global competition.

Producers blame workers, the government and buyers as causing the problem. Regarding workers, they argue that if workers concentrate on their job, and not on demonstrations, they can rise to Tk 10.000 within 6 or 7 years (TDS 722, 724). Regarding the government, it is criticized that it does not provide institutions “to breed and groom operators”, to make production lines more efficient. For that reason approximately 20% helpers have to learn up to 12 months in a factory to become an operator. Finally, factory owners complain about international buyers’ purchasing practices and demand ethical buying practices, particularly the payment of higher prices<sup>98</sup> (→ CH 10).

Particularly NGOs, but also consultants/auditors have replied to the problems producers and buyers claim with the following suggestions: On one side, mainly NGOs argue that wages only amount to a small percentage of the final price, and that they should be increased, maybe by raising all wages in the Asian garment industries (i.e. the ‘Asian Floor Wage’ proposal). On the other hand, mainly the BSCI and consultants propose to increase the productivity in factories.

#### **NGOs: Increasing wages is not a problem**

NGOs argue that the wages contribute to only a very small percentage to the retail price of a product. If a sneaker costs 100 Euro, the workers’ wages would amount to 0,40 Euro, whereas the brand gains 33 Euro. The CCC (→ Figure 11) claims that consumers would be willing to pay the additional money for a shoe, if they knew about the low wages, and

<sup>98</sup> <http://www.thedailystar.net/story.php?nid=43306> (2008-06-29) (TDS815)



if this would guarantee that workers' wages were doubled (N23). The CCC has also calculated that it takes 11 minutes to sew a T-shirt, which ends up at around 0,10 Cents<sup>99</sup> for a T-Shirt if living wages are paid (N23).

Companies have countered this calculation by arguing that any increase in costs of production – whether they originate in social, environmental or other changes – raises the selling prices by more than just the increase in production costs, due to multiplying effects in the supply chain (B1). These multiplier effects are the more problematic, as the companies are in a competitive situation in which customers might walk off to some competitor, if the prices increase too much (→ for more compare CH 10.1).

The local organizations that have started the 'Asian Floor Wages' campaign argue that the excuse regarding competitiveness becomes invalid, if the increase of wages is not a matter of competition anymore. This would happen if the minimum wages in all Asian production countries would be raised at the same time. However, this addresses the governments and not the companies.

### Wer bekommt die 100,- Euro für meine Sportschuhe?



Figure 11: Who gets the 100 Euro for my sneaker? (Source: Clean Clothes Campaign)

### BSCI: Improve the productivity in the factories

Mainly the BSCI and consultants argue that higher wages need not threaten the competitiveness of a whole nation and suggest that increasing wages can remain cost-neutral, if they are financed through gains in productivity in the factory and therefore lead firms need not increase the prices they pay to their suppliers (A4, A8, TDS 722) (→ CH 10.3). Some claim that low minimum wages are also responsible for low product quality and that there is a business case for paying higher wages (N7, B20). Finally, some suppliers in Tirupur argue that they pay higher wages to keep the labour turnover – and therefore costs – low (S8, S10).

## 8.2.4 Summary and conclusions

<sup>99</sup> Calculation: 10.000 Taka living wage in Bangladesh = 62 Taka per hour = 7 Taka per 11 Minutes



The chapter has pointed out the following main struggles around living wages and legal minimum wages. These struggles are not only valid in Bangladesh, though the very low minimum wages and the countries' strong dependence on exports may make them more extreme there:

- **Governments are responsible for setting decent wages:** Those actors arguing that they want to pay a national minimum wage frame the government as responsible for setting the right wages. They also argue that it is the legitimate body to do so. If wages are too low, the government must increase them. Whereas some lobby the government to increase wages, others do not. This view does not take into consideration the adverse effects of global competition that motivate states and companies to pay low wages.
- **Companies share a responsibility for decent wages:** Those demanding a living wage argue that national minimum wages are not necessarily set according to the needs of people, but in a way that is influenced by global competition. They accept the existence of structural injustice. In this view, competition and the threat of relocation influence corporate actors and governments in their decisions fixing low minimum wages. The example of Bangladesh shows that even if the wages are deliberated on a national level, those who are more powerful decide; and these are usually not the workers. Producers in Bangladesh, e.g., demand that the economy should come before politics, because politics prevent the growth of the economy.
- **Business reality vs. worker reality:** Whereas those demanding minimum wages claim that living wages do not reflect the business reality, those demanding living wages claim that minimum wages do not reflect the daily reality of the workers.
- **Shared responsibility vs. delegated responsibility:** The payment of wages in global production networks can be seen as a question of shared responsibility between producers, brands/retailers and consumers, and the action to improve these wages is connected to problems of collective actions (→ CH 2.4): each actor must be willing to pay more. However, each actor argues that he is not the only one responsible for increasing the wages, but that this responsibility is shared between the consumers, the buyers, the producers and the governments. However, in a competitive situation no one dares to increase wage, if competitors do not join. There is a collective action problem. This problem recently led to the 'Asian Floor Wages' campaign to demand that all Asian countries should increase their wages at the same time in order to avoid particular buyers moving to another Asian country that does not increase its wages.
- **Input and output legitimacy:** There seems to be a contradiction between input and output legitimacy: even if the negotiations get the seemingly 'right' groups to the table, the result can still not be legitimate, as in the Bangladesh case. This is most likely the case because of power relations between the agents, where those who argue that higher wages reduce the competitive position, have more say.
- **Arguments against living wages:** While NGOs claim that paying only minimum wages often violates human rights and that companies must make sure that producers pay living wages, the following arguments are presented against the demand that lead

firms fix living wages: Factories are far from paying minimum wages, therefore these should first be achieved; there is no universally-accepted definition of living wages; lead firms do not have the power to ensure that producers pay living wages; wages cannot be increased in global competition. According to the latter argument, the economic competition in GPN has created a kind of post-political situation in which the open deliberation of issues such as wages is less important than the economic sustainability of an industry.

### 8.3 Discussion and conclusions

This chapter analysed how different actors in a global production network construct or deconstruct the legitimacy of legislative regulation in private standards initiatives, which I sum up in the following question: **How and by whom must rules for companies operating in global production networks be set?** Since the concept of legitimacy in global production networks is socially constructed and no global truth regarding this issue can be determined, various scholars argue that private standards initiatives must be legitimized by “engaging vis-à-vis the public by engaging in public discussion” or deliberation with the relevant stakeholders concerned by the rules (Palazzo & Scherer 2008:774). In this context, questions like ‘which stakeholders participate?’ and ‘how transparent are the processes?’ are of relevance (→ CH 3) (Dingwerth 2007). But the theoretical ideas presented in chapter 3 do not reflect in more detail how deliberation must work and particularly which stakeholder must participate so that private standards initiatives gain legitimacy. I empirically analysed in this chapter how different actors discursively frame this need.

The two case studies FWF and BSCI obviously differ regarding their stakeholder participation in their legislative regulation approaches by definition, as one is a multi-stakeholder initiative and the other a business initiative (→ CH 6). Basically, both initiatives refer to the ‘territorial embeddedness’ of global production networks, i.e. that corporate practices and their production networks are ‘anchored’ in particular places. Both use this embeddedness to argue that stakeholders from multiple locations must be included into the legislative regulation (network embeddedness), and both do include stakeholders. The FWF and supporters argue that as a multi-stakeholder approach they include company and worker representatives in the decision-making board, and this makes the whole approach legitimate/credible. Additionally, legitimacy is framed by involving stakeholders in the producing countries through the production networks. The BSCI and members claim that as a business initiative they do not have to integrate any stakeholders into the decision-making, however, the dialogue with stakeholders in Europe and in the producing countries is said to be important. Additionally, both initiatives also argue that they are transparent. Hence, can the legislative regulation of both initiatives be regarded as legitimate or credible?

Based on CSR concepts presented in chapter 3.1.4, I suggest that the BSCI is legitimated within the ‘positivist CSR’ framework, i.e., corporations are seen as de-politicized actors that only symbolically engage in discourses. Pragmatic legitimacy is at

use here. In contrast, the FWF is legitimated within the ‘political CSR’ framework, i.e., corporations can be seen as political actors who must legitimate their practices by engaging in public discourses. This framework draws on pragmatic and moral/discursive legitimacy.

The BSCI constructs pragmatic legitimacy (→ CH 3.1.4, Box 2) by engaging in stakeholder dialogues in Europe and in the production countries, but not by engaging them strongly. It presents how the different stakeholders (positively) evaluate the initiative and positively frame the initiative’s efficiency and effectiveness. However, stakeholders have no decision-making power in the BSCI. This lack of power of civil society agents can be seen in terms of pragmatic legitimacy, as member companies support the idea that they – and not NGOs – keep the decision-making power. Reasons given were that they – and not the NGOs – have to take the responsibility for implementing the standards in the end. BSCI and its members strongly argue that competition in global markets (institutional embeddedness) does not ‘realistically’ allow, e.g., the implementation of living wages, what NGOs – if they had the deciding power – would force them to do. Such arguments follow the concepts of pragmatic and cognitive legitimacy (→ CH 3.1.4, Box 2) and thus reflect the ‘positivist’ CSR framework. ‘Positivist’ CSR refers to the concept of liberal democracy where governments make rules, which companies have to follow. Arguments presented about why the BSCI implements national minimum wages also follow the positivist CSR framework. While members and governments might be key stakeholders, who provide pragmatic legitimacy to the BSCI, the CCC should also provide pragmatic legitimacy as a key stakeholder. The attempt to involve the CCC into the ‘Stakeholder Board’ failed, because this board is not connected to decision-making power.

In contrast, the FWF has mainly constructed pragmatic legitimacy by involving the CCC and trade unions into the policy-making, but the FWF has not managed to gain pragmatic legitimacy by all companies. For instance, some BSCI members or some companies that are not members of a private standards initiative argue that they do not see the additional benefit in joining the FWF. In addition, interviews with local NGOs in the producing countries suggest that both initiatives have failed to gain pragmatic legitimacy with some local stakeholders, as they are fully excluded.

Palazzo & Scherer (→ CH 3.1.4) argue that organizations must gain (moral) legitimacy by ‘explicit public discussion’ or a ‘deliberate discourse’ – instead of using symbolic or strategic activities and manipulating and persuading opponents. Young argues that companies must discharge their responsibility through collective action (→ CH 2.4). However, both leave open, how exactly collective action in form of public discourses shall be constructed in order to create legitimacy. The empirical analysis shows two different approaches to realizing ‘explicit public discussion’ on what rules companies should follow. I suggest that the approach of the BSCI creates pragmatic legitimacy but not moral/discursive legitimacy, while the FWF approach creates a more political form of CSR as it has the potential to gain moral/discursive legitimacy. However, the FWF approach also has its limitations.

Although the BSCI does not integrate any stakeholders in the decision-making it

strongly frames the participation of stakeholders in terms of creating legitimacy. For instance, it argues that local stakeholders participate in order to gain their local knowledge and to make the initiative more effective. The round tables would reflect a relatively large scope of participation. However, interviewees from developing countries did not regard the interaction as particularly empowering. The quality of participation is therefore low (→ CH 3.3.2). Findings show that the stakeholders are participating on the one hand, to make the initiative more effective, and on the other hand, for symbolical reasons. Whereas this does construct pragmatic legitimacy, it does not construct moral/discursive legitimacy in the eyes of most civil society stakeholders, since the results of a deliberation would entail that the better arguments win and that all participants can agree on the achieved result. However, the empirical analysis indicates that the CCC is not happy with the outcome of the BSCI, i.e., it does not achieve the level of deliberation required for moral/discursive legitimacy. Also the fact that the BSCI did not respond to critique by the CCC and that it does not give decision-making power to stakeholders reflects that we cannot speak of deliberation in a sense that the better argument wins.

The FWF approach sets its rules in a deliberative discourse amongst a limited community of experts, which might provide moral/discursive legitimacy. The decision-making in the FWF board is limited to a small group of experts, which could be seen as 'true'/empowering participation (→ CH 3.3.2). The results of the decisions are made explicit, but not the way in which a decision was produced (i.e., it neglects power relations between the members on the board). In conclusion, whether the FWF generates 'procedural legitimacy' depends on which audience we are looking at. The FWF, its members, the CCC and some other civil society actors argue that the FWF uses 'sound practices' and provide moral (procedural) legitimacy. However, some companies that are not members in the FWF and some local NGOs in producing countries criticize that the participation in the FWF does not represent their interests. The scope of participation is therefore questioned (→ CH 3.3.2) The FWF counters claims of the local NGOs with the argument that they cannot include all NGOs. But the critique points to the fact that 'multi-stakeholder' is not per se morally more legitimate if it does not recognise which actors participate and how they participate. Regarding the promises of the FWF that living wages are included, member companies and also NGOs are missing concrete measures of the living wages – hence: it is questionable how transparent an initiative must be to gain moral legitimacy.

In conclusion, the way the FWF integrates stakeholders into legislative regulation comes closer to a deliberative arena than the way the BSCI integrates stakeholders.

## 9 Judicial regulation in global production networks

As part of their corporate responsibility practices, brands and retailers that are members in the BSCI or FWF contractually demand from their suppliers in developing countries that they comply with certain social standards (→ CH 7.2 & 8). The BSCI and FWF rules further demand from their members to test how the supply factories comply with the social standards by conducting social audits (→ CH 7.3). Social audits are seen as necessary in order to prove that the suppliers make progress in implementing the standards. The audits are seen as part of the judicial regulation: “the means through which business responsibility is made practical” (Tallontire 2007:786).

However, academics, social movements, suppliers and also auditors criticize social auditing practices for not being credible and effective (→ CH 3.2.2 & 3.3). The CCC in particular criticizes the audit approach of the BSCI (→ compare Box 10). The lacking credibility of social audits can endanger the legitimacy of a private standards initiative and of the member company implementing the CSR practices. Therefore it is of central importance for the BSCI, the FWF, and their member companies that their stakeholders regard their social audits as credible and effective.

As there are conflicting opinions regarding social auditing this chapter focuses on the following question: **What do various actors regard as ‘good’/‘bad’ social auditing practices, and what arguments do they use to substantiate their claims?** The results of this chapter do not tell us which audit approaches are de-facto good or bad. They rather highlight main struggles around the credibility and effectiveness of social auditing and examine the arguments presented by the BSCI, the FWF, their supporters, and the stakeholders criticizing these practices. And pointing out the mainly contested issues and the arguments, however, might help to draw some recommendations regarding good social audit practices and its limitations on the discursive basis of the ‘better’ arguments. The following four broader issues reflect the mainly contested issues (compare: Box 10).

- Independence and transparency of social audits (→ CH 9.1)
- Quality of social audits (→ CH 9.2)
- Participation of local stakeholders in audits (→ CH 9.3)
- Costs and responsibility (→ CH 9.4)

Each chapter presents and discusses different viewpoints and finally sums up the main conflicts.

**Box 10: The CCC position on social audits: “Looking for a quick fix. How weak social auditing is keeping workers in sweatshops”**

In November 2005 the CCC International published a 100-pages report “Looking for a quick fix” (Pruett 2005), which sums up the arguments of the CCC against social auditing. The findings are based on an empirical analysis of the CCC in eight countries. 670 workers were interviewed in 40 factories. The report argues that social audits are not effective, not credible, and that they do not improve the situation of workers in garment factories. It criticizes that approaches like the one of the BSCI rely too strongly on social auditing, without using any additional practices that help the supplier to

improve the standards. However, it also points out that social auditing can be effective and credible if it is conducted in the 'right' way, i.e. if sourcing companies adapt a 'toolbox' approach that combines social audits with the following tools: partnerships with local organisations, grievance and complaints mechanisms, education and training, a pro-active approach to freedom of association, addressing existing business or purchasing practices, effective remediation, and transparency. As the CCC has a seat on the board of the FWF most of these tools are integrated in the FWF approach.

## 9.1 Independence and transparency of social audits

In this chapter I discuss two concepts that are mainly contested with regard to the credibility of audits, namely the independence of auditors (→ CH 9.1.1) and the transparency of audits and their results (→ CH 9.1.2).

### 9.1.1 Independence of auditors

Independent auditors create trust in the results they provide (→ CH 3.2.2). The CCC demands that auditors must be financially and personally independent of the company whose claims it controls, which the FWF tries to achieve with verification audits. The position of the BSCI is that third-party auditors are independent because they use standardized and 'objective' methods of high quality. In this view trust is generated by assuming that auditors are neutral.

#### **Auditors must be independent of the company they audit**

The CCC claims that audits conducted by 'professional' for-profit audit firms have a built-in bias and credibility problem and cannot be seen as fully independent: Audits "must be performed by organisations or individuals that are independent of the enterprises or organisations whose claims are being verified" (Pruett 2005:59f,84). The CCC defines independence in financial terms: An audit is not seen as independent if a buyer or a factory pays him (Pruett 2005:59f,84). Particularly civil society actors support this view: A local NGO, for example argues that auditors do not look properly into certain issues, because they are dependent on the company paying them and are afraid that they might not get another assignment if their results are not biased (N9b). Vice versa, a local NGO auditor says that his own audits are credible because they are doing audits "not for money purpose, but for the social purpose" (A5). The verification audits by the FWF are regarded as independent because the member or supplier does not directly pay an audit company because the FWF controls and pays the factory verification audits (→ CH 7.3). The fact that the FWF finances the verification audits with the membership fees, which cannot be seen as independent according to the CCC statements quoted above, is not seen as problematic by one CCC member (N2) and is even supported by the FWF, as the quote shows:

*Financing of verification is a point of discussion. Non-members criticise that we are dependent on our member contributions and thus not neutral – we argue that we mainly live through donations of NGOs, even if we want the incomes from members to rise. We also do not want to carry the costs of implementing social compliance for the companies; the members shall add this to their products (FWF 2008c)*

Currently many FWF members cannot conduct audits and commission audits to the initiatives' audit teams and pay them directly. In such cases the verification audits are seen as "not really necessary at the moment ... because it would be kind of silly to verify

an audit where we ourselves audited” (FWF 2008d:6)<sup>100</sup>. However, this runs counter the idea of (financially) ‘independent’ verification audits, since FWF audit teams pay normal third-party audits instead of verification audits (→ compare chapter 9.2). The importance thus shifts to the quality of audits (→ CH 9.2)

Another view regards auditors as independent, if they are biased towards the workers and not to the company. For instance, an FWF member states that an organization like the FWF ensures an independent and unbiased control, because it includes NGOs and other stakeholders. He says that NGO auditors do not have an incentive to deliver results that are biased towards the company and that NGOs cannot be bribed (B1). In this view the fact that trade unions and NGOs are sitting on the board of the FWF transforms the initiative and also its auditors into an independent body (B1, N2, N20).

### **‘Objective’ audit results through standardized audit methods**

The audits in the BSCI system are presented as credible because an independent external auditor conducts them, even if the company he audits pays him. In this view, the independence derives from the use of methods that ‘guarantee’ ‘objective’ and comparable results. The methods and the auditors are accredited by an independent NGO, the SAAS<sup>101</sup> (B3). The belief in ‘objective’ audits is grounded in a far spread belief in the audit industry that the right (‘scientific’) methods – i.e. standardized methods and questionnaires – deliver objective and true results (compare Power 1999). In 2007, BSCI members argued that external verification by another NGO, as done by the FWF, would not improve the credibility of the audits (B3, B4)<sup>102</sup>:

*Wer soll diese unabhängige (Verifizierungs-)Stelle sein, sie selbst. Ha, ha. Was soll das bringen? Also, es sind SAI akkreditierte und externe Dritte, warum soll ich einen externen Dritten noch mal durch einen externen Dritten verifizieren lassen? (B3)*

This belief in ‘objective’ audit results is not shared by the CCC and organizations like the ETI, who argue that ‘objective’ methods do not identify the real problems in the factory and thus do not bring any improvement to the workers. The workplace situation, it is argued, cannot be evaluated objectively, but it is always the auditors’ subjective and contextualized interpretation. As the following examples illustrate, a local NGO would in many instances interpret a situation in a factory differently than a professional auditor, who might know little about the local situation and evaluates the workers’ rights as lower than the factories’ economic competitiveness:

- The CCC criticizes that some auditors interpret the existence of a work committee as equal to having the right to freedom of association respected, and then write down in the audit results that the factory is compliant with FoA (Pruett 2005:32,34f). Whereas the CCC sees a vast difference in this specific interpretation, a BSCI member does not view this as problematic (B16).

<sup>100</sup> That makes it quite unnecessary to verify that kind of audit, because it would be kind of silly to verify an audit where we ourselves audited. ... So that makes it not really necessary at the moment to have this kind of redundant strategy structure to check afterwards. We are actually still very much, too much, involved in the actual process of auditing. (FWF 2008d:6)

<sup>101</sup> SAAS=Social Accountability Accreditation Services, which is the accreditation body connected to the multi-stakeholder initiative Social Accountability International (SAI)

<sup>102</sup> In contrast to this statement, recently the BSCI introduced so-called ‘surveillance’ audits in 2% of the factories, in which another SAAS auditor joins the auditor in order to check whether the audit is conducted correctly and to improve the credibility of the audits. (B16)

- An auditor argues that he does not strictly stick to the rules, but interprets the situation in terms of the (socio-economic) ‘ground realities’ because otherwise “not a single factory in this country would pass an audit” (A2).
- A local NGO criticizes an auditors’ interpretation of overtime: “They even hired a consultant who justified overtime. So even he doesn't have the heart to tell 8 hours is a normal shift. ... This is kind of stupid, who can talk like that” (N9).

In order to better grasp the local context, auditors claim that they interact with local stakeholders (→ CH 9.3). In connection to their independence, interviewees point to the problem that audit results are not transparent and cannot be verified.

### 9.1.2 Transparency of audits

The CCC argues that audits have little credibility if audit methods and results are not transparent and cannot be verified by an independent organization (Pruett 2005:53ff) (N9). The CCC criticizes that the BSCI does not disclose information on factory locations or social audits but that it sends the audit results exclusively to the member and the audited factory (Pruett 2005:65). However, the CCC does not criticize the FWF for lacking transparency although it also does not publish factory audit reports nor show them to the board or the expert committee (→ CH 6)<sup>103</sup>. This chapter shows how the limited transparency is justified by the initiatives, and more so, how the initiatives use audit results to legitimize their practices.

#### Confidentiality of business information

Both initiatives claim that the disclosure of audit results is limited due to their members’ demands for confidentiality regarding their business information. For this reason, the FWF only uses local NGOs or trade unions working on labour rights issues as auditors that agree not to misuse information for campaigning activities (→ CH 8.1) (FWF 2008d; FWF 2008b). This has evoked critique by some local NGOs, who complain that they are not involved properly into the practices of the FWF, perhaps because they were not considered as trustworthy (→ CH 9.3). The following quote shows that the FWF does not use trade union members as ‘independent’ auditors due to the problems mentioned above, which contradicts the claim of the CCC to involve local trade unions more:

*So it's impossible to hire trade union people in our teams, also because they will always have the problem of two mandates. Like, when you work within Fair Wear Foundation you have to work purely within that commercial relationship. Any findings that you have must be related to the buyer, and the buyer must try to change it. So if you have a trade union, they might be tempted to go into direct action. ... many of our workers' interviewers are people coming from labour campaigning organisations, but we have to tell them: look, whatever you find out that can only be used in our process. We don't want you be sending out leaflets the next day you are there. So we cannot have people that are too much involved. They must be committed. That, if they are really very committed radical labour activists, or if they are trade unionists, we cannot have them in the audit team. (FWF 2008d) (FWF 2008b)*

BSCI members argue that transparency – as demanded by NGOs – is not necessary for them. One member from a BSCI Committee argues that the initiative does not have to justify anything to anyone, and that audit results are business secrets (BS1). They see

<sup>103</sup> The FWF regards the audit reports as business secret, whereas it publishes a summary of the management system audit reports and the members publish an annual report. Personal communication, May 2010



themselves as a pro-active business initiative with good intentions that already exceeds what they have to do by law. Being a business initiative, it is argued, the BSCI is already sufficiently transparent with the annual reports.

#### **Legitimizing lacking transparency in FWF: “We are multi-stakeholder”**

The FWF and its members reject the demand by some NGOs that companies shall publish more detailed information such as supplier lists and audit reports, referring to the ‘balanced’ way, which “shall guarantee independent and objective verification” (FWF 2002:3-2). Due to the diversity of the members, the FWF refrained from comparing the efforts of the members in a ‘one-size-fits-all’ approach, as done by the BSCI, but publishes more descriptive reports since 2009, whose credibility is guaranteed by the multi-stakeholder character (FWF 2008c).

Finally, too much transparency is regarded as problematic because the effectiveness is said to suffer from it. Reports are said to be formulated more softly if they are reported, and this way, the real problems might not be identified, because, e.g., managers might not speak openly about their problems: “Members are said to speak more openly about their problems with the increasing time they are FWF members, and this trust is said to be only possible because FWF guarantees confidentiality” (FWF 2008b). Trust between the members and the FWF thus creates a protected space where information that could be used against the companies does not get to the outside. However, the multi-stakeholder setting shall guarantee that the companies improve.

#### **Legitimizing BSCI approach through audit results: “Our progress”**

The BSCI also refrains from making detailed audit results public for similar reasons. However, it uses aggregated audit results to legitimate the whole initiative. In the BSCI annual reports the initiative juxtaposes the results of factories that were audited twice and presents the differences in the overall results as “our progress” (→ see Figure 12). The BSCI frames the improvements in the re-audits as causally related to monitoring and the corrective action taken within the BSCI system. It claims that the audit results ‘prove’ that the implementation of the BSCI system brings a ‘real’ and ‘measurable’ improvement to the supply factories, and that it has reached 1,85 Million workers since its existence (BSCI 2005:20; BSCI 2007a:6,20,27; BSCI 2008:3,17; BSCI 2009)<sup>104</sup>. It further asserts that the system is the “most efficient way to make sustainable improvement in labour practices” (BSCI 2007a:27; BSCI 2008:3)<sup>105</sup>. The assertions are supported by quotes of stakeholders in the annual reports:

*I welcome the work of the BSCI and of the enterprises that contribute to it. Programmes such as this help to raise awareness of the importance of social and environmental standards in developing countries. ... I would encourage the BSCI and other stakeholders to find ways to work together to further strengthen this initiative. (Günter Verheugen quoted in (BSCI 2008:17)*

As figure 12 suggests, the BSCI claims that participating in the system has moved almost 30% of the factories out of the area ‘non-compliant’:

<sup>104</sup> <http://www.bsci-eu.com/index.php?id=2028>, 20.7.2009

<sup>105</sup> The outcomes of audits, and more visibly of re-audits, shows that there is a measurable improvement after audits due to more awareness and corrective action being taken.

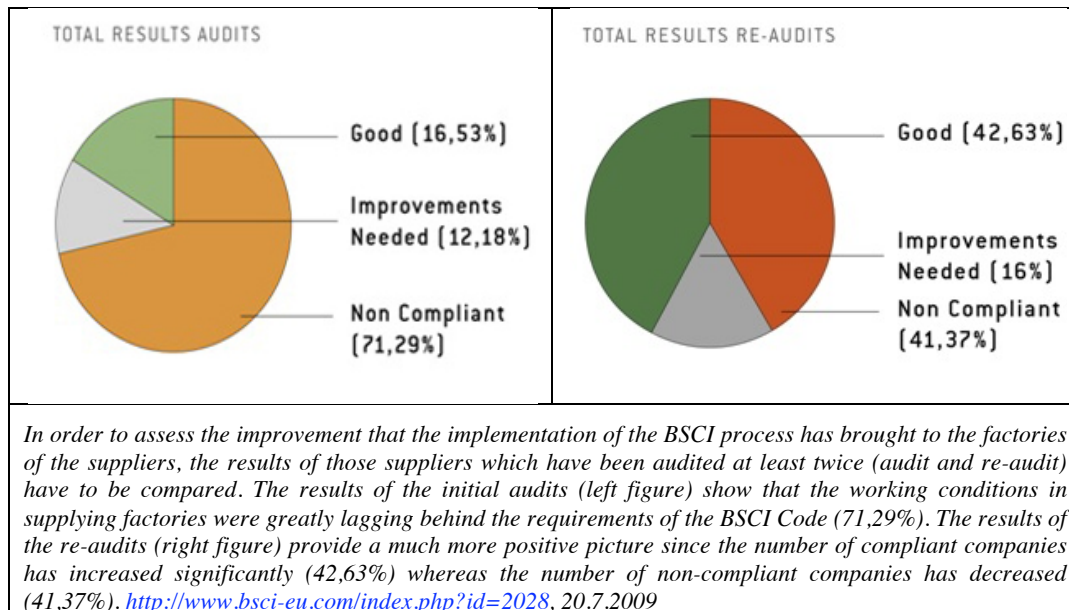


Figure 12: “Our progress” from the BSCI website (<http://www.bsci-eu.com/index.php?id=2028>)

The results generally present a very positive image of the initiative, while they say nothing about single members. However, in more detail, the BSCI writes that the effects of the initiative focus on obvious breaches “emanating from the sections Management Practice, Health and Safety, Compensation, Overtime”. It claims that the results ‘confirm’ that the ‘most important’ social compliance issues are working time, compensation, occupational health and safety (BSCI 2007a:6). At the same time the BSCI argues that voluntary regulation is a limited tool for tracing and improving non-compliances in certain areas like freedom of association or living wages (BSCI 2005:27), which are rather “difficult to track in an audit” and in some countries are of “highly political nature” (→ CH 3.1). For these issues the solutions shall be found on the level of national politics. These limitations are not communicated prominently in the presentation of “our progress”, which is problematic, as many civil society actors regard the rights like freedom of association as the most relevant ones (→ CH 10.3).

### 9.1.3 Summary and conclusions from the findings

Regarding the credibility and effectiveness of social audits the following issues are mainly contested:

- **The credibility of social audits is legitimized with reference to different knowledges.** One view (BSCI) bases the credibility of audit results on standardized and ‘objective’ audit methods that are based on quasi-scientific knowledge. In this view, the credibility of audits is not influenced by the question of who finances it. According to another view (CCC & FWF) audits cannot be objective, but are always subjective interpretations of the situation in the factory. Therefore context-specific local knowledge must be used to identify central issues. In addition, financing can influence auditors and audits should be (financially) independent from those whose claim to be credible it checks. However, in this view, the audits of the BSCI and the FWF would both not be credible.

- **Independence and thus credibility of auditors** is also seen in terms of being with the workers (i.e. having the trust of workers) or with the factory managers (i.e. having their trust). In this reasoning NGOs or trade unions are seen as credible auditors, because they are on the workers' side, whereas paid auditors are rather biased by the management. The FWF claims that by being a multi-stakeholder initiative it is legitimized as conflicting parties participate, and argue that it therefore does not need so much transparency. In this perspective the credibility seems to extend to the whole initiative.
- **Credibility & transparency:** The BSCI and the FWF do not publish audit reports related to each factory, these are only transparent to the auditors or the BSCI and FWF staff. The CCC still regard the audits by the FWF as credible, due to being a multi-stakeholder approach and using multiple-instruments, whereas it criticizes the BSCI for not being transparent.
- **Transparency & effectiveness:** While the BSCI publishes annual audit results to legitimize the initiative by showing "our progress", the CCC uses local knowledge by NGOs, trade unions and workers to deconstruct this image. The central argument is that the BSCI uses the wrong people and methods that cannot yield any correct results, and at the same time hides the audit results.
- **Effectiveness & priorities:** The CCC and BSCI have different priorities in their aims and therefore evaluate audits differently. The BSCI argues that the most relevant non-compliances are factory management practices, health & safety, overtime and compensation. More 'political' issues like freedom of association should "be better addressed through dialogue and lobbying at a political level". In contrast, the CCC regards freedom of association as the most relevant issue and thus harshly criticizes that audit methods cannot identify breaches against this code – finally questioning social audits.

## 9.2 Audit quality

Arguments referring to the quality of audits discuss whether social auditors and their techniques *can* identify code violations in factories. NGOs, and also brands and auditors deny this, arguing that audits often do not identify the 'real' problems in the factory. Particularly, NGOs regard social audits as "eyewash", "social wash" and a "waste of money" (N9). In their report on social auditing the CCC complains that many auditors from large 'professional' audit companies like SGS, BVQI or PWC conduct superficial factory audits and use the wrong techniques (Pruett 2005:26,28,49) (→ CH 9.1). Auditors also say that it can be difficult in audits to identify certain problems and to prove that standards are breached (A1, A2).

However, most claim that audits cannot identify all violations similarly well. One auditor explains that problems relating to health & safety are much easier to identify than "more subtle issues like discrimination" (A3) – which is confirmed by the BSCI (→ CH 9.1.2.). The CCC writes that audits fail "to bring significant improvements in freedom of

association and rights to collective bargaining, non-discrimination, wages, working hours, employment relationships, and abusive treatment of workers” (Pruett 2005).

Suggestions to improve audit quality mainly deal with three issues: (a) who audits, (b) how do they audit, and (c) cheating in audits.

### 9.2.1 Who audits?

There is a lot of mistrust in social auditors and many say that auditors are not **trained** well (→ CH 3.2.2). The CCC criticizes that audit firms “have no professional training in other areas such as health and safety, labour law, workers interviews or human rights issues” (Pruett 2005:28,50f). As a result of their lacking training, auditors do “sloppy errors”, like having factory managers translate for them, or interviewing workers in the factory under the managers’ view, where workers do not speak freely because of the power relations, i.e., they fear being fired (→ CH 9.3) (Pruett 2005:28,49). An auditor running a small, local, and specialized audit company supports this view, saying that auditors from the big auditing companies mentioned above are “basically lab-testing agencies” (A2), who are not working at the local level:

*Most auditors are not trained. They don't know what the heck is going on. I think there are a lot of companies who are just there to make money out of this than do any genuine and good work at the grass-root level. (A2)*

A local NGO similarly complains that large audit companies make much money for delivering no results (N9). Finally, representatives from large brands conducting their own audits claim that external auditors in general are badly trained and conduct audits superficially; they prefer to do their own audits also because of differences in codes (B9, B8), which they then have verified by the FLA:

*In terms of sharing a report, even if I got a report, I would still probably do an audit by myself. So they might have left something, which my workplace standard is strict about. They might be flexible about some issue, my brand might not be. So as in that case also, sharing audit reports is not something 100% I would do. (B9)*

While many NGOs criticize BSCI auditors for not being trained, vice versa, the BSCI and its members claim that their audits are of ‘highest’ quality, mainly because they “undergo constant training, further education and accreditation by SAAS” (BSCI 2007b:8) (→ CH 9.1.1). The accreditation to SAAS and surveillance audits is said to guarantee the high quality of audits:

*Only auditing companies that have been accredited by Social Accountability International (SAI) and selected by the BSCI will be entrusted with carrying out BSCI social audits. This assures the best possible audit quality while avoiding costly and bureaucratic accreditation procedures. (BSCI 2007b:8)*

*Er bezahlt, und wir sagen halt: die auf der Liste sind, sind alle in Ordnung, weil die sind SAI akkreditiert. (B3)*

Similarly the FWF emphasizes that it is working with specialists in their audit teams<sup>106</sup>.

While the critique is often framed in terms of ‘low audit quality’ or ‘lacking training’, local NGOs claim that training of auditors alone does not solve the problem that auditors cannot build up trust with the workers. Therefore NGOs demand that auditors must be **locals** who have knowledge of the local background and who are permanently there for

<sup>106</sup> <http://fairwear.org/page/verification>, 3.3.2010

the workers, as compared to auditors, who fly in to audit a factory and are later gone again (N4, N9b). This allows them to understand locally relevant issues, workers' problems, and how to deal with workers (→ CH 9.3) (N4, N9). NGOs say that whereas many auditors from large firms have a good knowledge related to the management of a factory, they lack knowledge of the 'local background' regarding workers (N4b).

### 9.2.2 How are audits conducted?

Two issues are mainly contested regarding the 'how?' of auditing: (1) How long audits should take and (2) how must audits be integrated into the local context.

First, the CCC criticizes that audits are more of a '**quick fix**' and that in the short time they are done they neither can build up trust with the workers, nor discover more subtle problems. Due to such critique, the BSCI has extended the audit duration up to 4.5 days "to give auditors more time to complete the BSCI audits and to interview employees" (BSCI 2009a:7). However, an FWF member working with high quality products claims that audits by the FWF teams that take 2 days for three people do not show different results than a quicker look into the factory would show. Therefore it regards long audits are a waste of money (B21). This reflects the view of retailers and brands, when asked why they did not become member in the FWF: many doubt whether the higher efforts taken by the FWF have a higher impact than less cost intensive audits.

Second, the CCC argues that **workers, local NGOs and trade unions must be involved** in audits. This is discussed in chapter 9.3.

### 9.2.3 Cheating in interviews

NGOs, brands and auditors say that factory managers use different strategies to cheat auditors and present a different picture of the reality inside the factory when the auditors visit. Cheating undermines the credibility of social audits and thus its quality (Pruett 2005:24,28,41) (A1, A2, A3, N2, B8). Managers use double bookkeeping or software to falsify the entries in the documents, they coach workers what to say in audits, and threaten to fire workers who do not comply. An auditor in Bangalore explains:

*There are people ... (here) who sell punching card software; this software allows you to decide that, ok after six, the workers punch, but it will not record it. Or record it, but will take it to a different database. Or you can buy a program where you can do some changes that ensure that everybody is going out at six. (A3).*

Some factory owners build up a model factory – which is presented openly to the auditors – while other parts of the production are outsourced to subcontractors, which are not disclosed to the buyers. Buying companies confirm that subcontractors are difficult to identify (A16). Factory managers are also said to bribe auditors (Pruett 2005:25). If factory audits are announced, cheating can get easier, the CCC criticizes (Pruett 2005). However, many prefer to announce audits in order to work with the factory management and not against it.

*The FWF finds that managers are generally more open to collaboration and workplace improvements if audits are announced. Pre-planning audits also ensures that appropriate managers and documents are accessible on the days of the audit.<sup>107</sup>*

<sup>107</sup> <http://fairwear.org/page/verification>, 26.3.2010

Why do managers cheat? Some interviewees argue that the buyers can influence this with their demands and relationships to the managers. Buyers mainly check the quality of the products and if they are not satisfied, the factory loses money. As a result, managers will do almost anything to get the production done according to the quality the buyer demands – including cheating auditors. In this view, factory managers either simply want to make profits, and believe that cheating is cheaper than telling the truth. Or some fear that the truth might lead to losing the business partner, even if there is talk of applying ‘developmental approaches’.

*You should also try to understand the mind of our factory manager. His focus is only for that shift. ... their whole focus, mind, and body is towards getting more production. So in the process, they will forget the basic standards. (S4)*

*He is not really bothered whether he is working OT or breaking the laws. (A3, S4)*

Some auditors and brands suggest that managers cheat less if auditors build up a better trust relationship to the management and offer help and a business case for improvement. They present solutions to them, which would result in a better sharing of information. This helps to identify more quickly the root causes of the problems and find out what is troubling the managers. In this view, managers’ trust also helps to build ownership with the managers, which is seen as necessary for sustainable change “because once you leave the premise, you don't know what is going to happen” (A6).

However, building up trust in the supply chain runs counter to building up trust in vertical network relationships with the workers. One local brand representative and auditor illustrates this problem by explaining that they do not do worker interviews “behind the managers’ back”, like the CCC demands, in order to not lose the managers’ trust: “we could create a lot of problems with the relationship we have with the supplier – so we tell him that we do it (the workers’ interviews) here“ inside the factory (B8). Similarly, an auditor explains that she usually invites factory managers on the audits in order to gain their trust (A6). This way she respects the managers’ problems and gains more information by chatting with him; furthermore she can offer solutions to the manager and help improve the production efficiency, which makes management more interested in the issues and help gain his trust and ownership in the issue<sup>108</sup> (A2, A6) – however, in contrast to the brand, she additionally interviews workers in their communities:

*Most auditors say we don't want the management when we are doing the walk around, and things like that. It doesn't make sense to me. Because, how much ever you try, the workers will not speak to you for the fear that they will lose the job, they will never talk to you. ... So what I do, I ask the management, why don't you come with me. That really stuns them. How is she as an auditor asking a management person to come with me? Because that is quite unlikely. So when I take them around I still see these are my views. This is what I am looking at as an issue; what do you think about. When you ask them, they will feel that importance that I have been asked upon my views. Then they start getting involved in the process. And they say, yes you are right. Then you give a practical solution. (A6)*

Others argue that managers cheat because they are lacking the management skills and knowledge to properly implement standards. Various interviewees connect this to the historical and socio-economic context into which managers are embedded. They say that

<sup>108</sup> There is clearly different opinions, whether auditors should offer solutions to managers or not. Some argue that they as auditors have a responsibility to help to resolve the situation and offer solutions, which they can, because they know the problems best (A2:1f). However, this way they could point out problems that do not exist, only to get assignments...

the garment industry is an entry for people who become entrepreneurs, due to its little capital intensity: e.g., farmers which have some capital start a textiles factory, and have not learned to treat the employees properly (A3, A4, A8). One consultant explains that the largest garment group in Bangladesh recruited 90% of its managers from the military, because they can handle many people – but certainly not with modern management techniques:

*Einfach, weil das Militär den Ruf hat, es kann mit Truppen umgehen und viele Arbeiter, das ist wie eine Truppe, man muss wissen, wie man sie beherrscht. ... Das heißt ganz weit weg von Human Resource Ideen oder modern Management (A4).*

Another consultant in Bangladesh criticizes that managers always complain that they are lacking management skills, yet he assumes that they only complain because they do not want to change the status quo:

*Das Gejammer ist so sehr gross, wir haben keine gut ausgebildeten Manager, wir haben unskilled workers, das ist alles ganz schrecklich. Dieses Gejammer, das ständig zu hören, auf jedem Forum, round table wird das explizit geäußert: wir müssten dies und jenes haben. Aber wenn es dann darum geht, etwas zu tun, oder eben die gut ausgebildeten Manager einzustellen, dann sieht die Welt noch ein bisschen anders aus. Für mich ist das vielfach eine Entschuldigung - wir haben die nicht, und deshalb sind wir, wie wir sind und können es ja auch nicht ändern. (A8)*

#### 9.2.4 Summary and conclusions from the findings

Whereas BSCI and FWF defend the quality of their audit approaches, many NGOs and local actors doubt that social audits identify the ‘real’ problems in factories, particularly if the auditors are not from the local place. The ‘audit quality’ mainly refers to the questions (a) what is seen as a ‘real’ problem, (b) who conducts an audit and how, and (c) has cheating occurred. These questions are strongly connected to the credibility of audits. The different actors frame the quality of their approaches in different ways, and these ways touch issues related to concepts like subjective/objective knowledge, embeddedness, trust and power, which differ spatially:

- Many conflicts in social auditing refer to **trust relationships** in the global production network. There are three different perspectives on what kind of trust relationships are necessary for good audits: (a) Workers must trust auditors (mostly NGOs claim). (b) Producers must trust auditors (mostly lead agents claim). (c) Producers must trust lead agents (lead agents claim). Since each stakeholder has a clear priority, these three demands are in conflict. For instance, if auditors are too close to the suppliers, the workers will not trust them anymore and if auditors are too close to workers, the supplier will not trust the buyer anymore. Audits might become ineffective, if one of the trust relationships does not work. It is suggested that all trust relationships might function, if workers are interviewed outside the factories.
- The **power and trust relationships between the lead agent and the producer** influence audit quality, but they also seem to be in conflict. Some claim that the lead agent must hold power over the producer, because he needs to gain access to the factory, the workers and the documents to audit a factory. Others claim that too much power and too much pushing and ‘policing’ by the producer might rather be an incentive for factory managers to cheat than to cooperate. This might particularly be

valid, if they have difficulties to fulfil the requirements, which is often said to be the case, and as cheating is easy.

- Some argue that **short social audits** lead to low audit quality, whereas others reject this. Short audits only get a snapshot of the factory, and auditors cannot build up the workers' trust in a short time. To compensate this problem some suggest that workers (e.g. by interviewing them) and local groups that have good contacts to the workers need to be integrated into audits. Another approach is that auditors take more time in a factory to conduct an audit. Longer audits, however, cost more money, and some doubt whether this is necessary. Some criticize that money spent on auditing is wasted because it cannot be invested in actual improvements.
- The **concept of knowledge** that is needed for high quality audits is contested. According to one view, audit quality is based on constant training and accreditation of the auditors by an external (multi-stakeholder) organization and standardized, quasi-scientific audit methods. Another perspective is sceptical about standardized 'one-size-fits-all' approaches to auditing and argues that audit results are always subjective. The latter view suggests integrating local knowledge more into audits, i.e., by integrating workers and/or local groups who understand the local context and the situation of the workers.
- **Cheating** in social auditing is said to be prevalent. Some argue that cheating is connected to the demands of buyers and can therefore only be changed by the buyers (→ CH 9.1). Others claim that cheating is connected to low management skills of factory managers and can thus be changed by training managers (→ CH 9.2).

### 9.3 Participation of local stakeholders in audits

Almost all groups say that local stakeholders have to be integrated into audits. However, which stakeholders are integrated and how they are integrated is very much contested. There are different opinions on how to include workers in audits (→ CH 9.3.1), and on how to integrate local civil society groups into audits (→ CH 9.3.2).

#### 9.3.1 Participation of workers

The CCC and various interviewees complain that in most audits workers do not participate sufficiently. Workers, the CCC claims, must be placed at the centre of audits to identify problems immediately and implement standards effectively (Pruett 2005:34,41,45,47,79). Workers are seen as the best auditors because they are on the production site the whole day and thus have inside knowledge (Pruett 2005:33-48,80). In this view, workers must be empowered to speak for themselves, e.g. by teaching them their rights, interviewing workers in their communities or allowing them to unionize or using complaints mechanisms (→ CH 9.3) (N4a, N5, N9a, A6, B8). As long as workers do not properly participate in audits, it will be difficult to identify more subtle problems in factories, they claim. Many social audits thus do not work because auditors only talk to managers or supervisors, who give a very biased picture of the situation in the factory.



This is one reason why the CCC sees “no reason to believe that ... auditors have gotten any better at collecting information through interviews” (Pruett 2005:41).

While most actors agree that workers have to be interviewed in audits, opinions differ regarding how to integrate them. The BSCI rules do not specify that workers shall be interviewed outside the factory, and according to the FWF rules at least seven workers have to be interviewed outside the factory (→ CH 7.3). Auditors and brands say that they use special interview techniques to build up trust with the workers, e.g. by posing questions indirectly to the workers (A1, A3, A5, B8), or by adapting to the socio-cultural conditions of the region or the workplace (A1, A5, A6). They speak the workers’ language, dress like the workers, use women auditors, who are better able to talk about more private matters with the workers, not only in Muslim countries (A3).

NGOs argue that the quality and credibility of worker interviews differs depending on where the interview takes place, i.e., whether workers are interviewed inside or outside a factory. The reason given is that the power and trust relationships between workers, auditors and managers vary in different places. Inside a factory the quality of worker interviews would be low. Here, workers would not tell the truth because they fear negative consequences from the management due to highly asymmetrical power relations (Pruett 2005:33ff,38,41,42). NGOs suggest that many workers do not trust auditors because they often do not introduce themselves properly to the workers; workers also do not trust anybody coming from the management side, as which most auditors or foreigners are seen (N4a). NGOs argue that managers threaten to fire workers any time they like if they tell auditors any negative things about the factory, and workers then lie to auditors because they fear to lose their job (N4a,b). Factory managers are also said to train workers on what to say when auditors interview them (A2) (→ CH 9.2.3). The following quote sums up the problem of power asymmetry in a factory:

*So the power asymmetry is huge. Here is this company, who has lawyers, and there is this very vulnerable worker, whose livelihood is on a month-to-month-basis. ... Everyone is against her. She barely survives there. It is a very frightening atmosphere. ... And then anybody who comes, who looks educated, well dressed is from the management. Anybody other than the workers is part of the management. So the workers never trust people who come and ask. Plus, in some factories we have heard recently about fake audits. Where the management conducts fake audits. Their own men ask, and assure the workers that they can say everything. You won't have any problem. And once they say, they come back and say, haha, see now. You must not say these things. If you say these things, the company will be closed, and you will be out of job. (N4a,b)*

While auditors and NGOs are sceptical that audits inside a factory can identify more political issues, they argue that certain issues (e.g. health & safety) can be identified (A1, A5, A6, N4b, N5):

*I do not completely say that the inside factory auditing is completely negative. I think it has a very strong role when it comes to safety and health. ... It will become stronger, if there are parallel outside auditing. ... See, the management's power comes from having no collective representation of the workers. ... In the factory is their own ground. But the community is not theirs. They are not living in the housing provided by the management. And there are other community powers, political powers. The management is on a weaker ground, when it comes to the outside. (N4b)*

Finally, some companies say that they only conduct worker interviews where managers see them, because they fear that clandestine interviews would destroy their trust relationship with the management (→ CH 9.2).

### 9.3.2 Participation of local civil society organizations

The CCC and local NGOs claim that credible audits require the ‘proper’ participation of NGOs and trade unions (N9, N4) (Pruett 2005:76):

*Companies need to develop programs that ensure the involvement of workers as well as local trade unions and labour rights groups. Their involvement improves the quality of social audits, the handling of complaints, and strategies towards remediation. ... the varied contexts found throughout the global garment industry mean that what works or is appropriate in some situations might not be feasible in others. (Merk 2008)*

I first present how this participation is conducted in the BSCI and the FWF, and I then discuss conflicts regarding worker participation.

### **Including local civil society organizations in audits**

The rules of the BSCI and the FWF demand very generally that auditors integrate local stakeholders in order to understand the local context better (→ CH 7.3)(B5, B3, B2). But they do not substantiate further which groups shall be integrated in what way (→ CH 9.2.1).

Almost all auditors claim that they integrate local stakeholders, e.g. by collecting information about the local culture from local groups to understand the local culture to be better able to interpret what they see in the factories (A1, A5, A6) (→ CH 7.3.1). The FWF chooses auditors from the area “with advice from local stakeholders”. Their auditors must read the country studies, which codify the local knowledge, and interact with local groups from the stakeholder network. This shall guarantee “a well-considered final assessment” (FWF 2008a:40). The BSCI demands that workers must be local, fluent in the local business language(s) and in the national language(s), and interact with local groups. BSCI members say that their auditors need not interview local organizations for every audit and need not discuss audit results with them (B3, B5). Instead, member companies say that local stakeholders “find recognition”, and a BSCI representative states that the Round Tables at the national level (→ CH 7.2.1) play a very important role in integrating local stakeholders for the BSCI (B16). The two quotes show how members see participation:

*Die werden angehalten, das ist Teil des Checks auch mal Gegenchecks mit lokalen Organisationen zu machen – ob das jetzt die Gewerkschaften sind, wer auch immer – sie sollen eben nicht nur die Mitarbeiter vor Ort befragen, sondern eben auch mal das, was auch sonst hier passiert. (B3)*

*Ich würde nicht sagen, dass das 100% und in jedem Fall gut funktioniert, aber wir haben schon das Gefühl, dass die lokalen Stakeholder durchaus auch eine Berücksichtigung finden - so können wir das, glaube ich, vielleicht am besten ausdrücken. (B5)*

One auditor from a large audit firm says he gathers information from local stakeholders, who play a prominent role in the community, like NGOs, community groups or religious groups in order to understand the local culture:

*For our audit purpose, as a third-party agency, we need to gather all the information from NGOs, local NGOs, local union bodies, local groups, and the villages, and all: What is the culture? Because, if you go South ... you cannot enter the factory with shoes. ... Even in some of the area, you cannot directly talk to the women front-to-front. ... Example: You go in factory; you won't find a single woman there. So you think first, oh, there is no woman. Why? Discrimination? No, because in this village area, women are not allowed by the villager male to work in the factory. So it is not discrimination (by the employer). So we gather a lot of other information from local sources, NGOs. (A1)*

At the same time he argues that he works ‘efficiently’, confirming the problems local groups have regarding how they are included: “We don't disturb them (local groups) frequently. We meet them, if they have got information, that is fine” (A1).

### Conflicts regarding worker participation

In India, various local civil society groups see auditors that are not from the region almost as a ‘hate-object’. Much of the critique by locals is based on the fact that external actors intrude into their area and take over the work locals ‘should’ do, and by that earn a lot of money:

*Auditors are one of the worst and dirtiest in the world. They make a big money out of it on account of the labour unions, on account of the labour activists. (N9b)*

Some local NGOs project their hate on all external groups (also MSI) that are coming from the outside, claiming that these do not improve the situation of workers in any way:

*MSI appoint useless commercial social auditors who produce colourful pamphlets and write up to satisfy companies and MSI. ... MSI have no relevance in Tirupur. Workers, Trade Unions and NGOs don't see them as any use in actually improving the working conditions. Once in a while they enter the offices of these organizations and take an interview and vanish in thick air. (N5b)*

### Auditors do not involve local groups ‘properly’

Local NGOs complain that although auditors claim that they ‘cooperate’ with local groups during their audits, they do not integrate them ‘properly’ into auditing practices and projects: “FWF, FLA or ETI ... they should not only consult us. They should also involve the local stakeholder into the process of audit” (N9b). Auditors never really ask detailed questions about a certain factory they are going to visit, do not share audit reports and don’t let local groups make counter-suggestions – they rather ask broad questions “more of an opinion making way” to prove that they talked to locals (N4a,b, N9a,b, N20). The following quotes criticize that on the ground, multi-stakeholder initiatives are not really ‘multi-stakeholder’:

*So when ETI comes here, we don't know. Our union does not know, so they have some auditors, like professional auditors. They do the social audits, and make the report give it as a confidential to the supplier and buyer. ... but they call it multi-stakeholder initiative, but it goes between the buyer and the suppliers. So what is our role, or what is the role of NGOs? (N9a)*

*Just not the really sharp information. Can you tell us about this company, is it good or bad? We have to say, yes, good or bad. If it is bad, they will just ignore us, and they will invite other persons. And when we have certain things like e.g. we want to check the working men hostel in the factory premises they will say, no no no, it is none of your business. (N9)*

*They<sup>109</sup> come and use our services. ... at the international level they claim that they are closely working with us or something. That is a false image they are getting. And also, when it comes to implementation of codes of conduct in factory, they never involve us. ... All the five multi-stakeholder groups are like that. And they use us only for campaigns. ... Only five, six organisations are there. They will come – FWF or CCC – and collect information from here. And we will spend our time and going around with them. ... Then, when implementing improvement projects, they'll bring someone from Bangalore, Delhi or other place ... They keep us totally dark about what is actually going on in their project, even information-wise. (N5)*

NGOs criticize that no local experts from local NGOs are taken into the FWF audit team in India. The FWF instead brings auditors from the outside, who earn a lot of money, but do not know the local context, do not integrate and respect the local stakeholders, and who do not change the situation of workers (N9b, N20):

*Even FWF auditors never consult (us). ... They come from different regions (500 km away). ... They (auditors) are taking money out of it. In a way they earn good money, without respecting the local stakeholders. ... See, I don't mind if you are engaging an auditor who comes from medical and different intellectual institutions. But when you bring three people, why don't you take two people from the local. ... Somebody, who can really voice for (our city). (N9b)*

<sup>109</sup> In the interviews the following organizations were mentioned: FLA, FWF, ETI, ILO, and Solidaridad.

Local stakeholders thus argue that they feel ‘used’ by international organizations, and some plan to resist against that (→ Box 11). Auditors, international organizations and NGOs come into their town, use their time, and do things that they themselves could and should actually do; they get money for that, and then often disappear without inflicting any improvements on the ground or giving local groups a ‘role’ (N4a,b, N5, N8, N9a,b). The local NGOs propose that they must conduct audits and trainings, because they are “some of the soil”, who are involved with the workers and thus understand their problems, contrary to outsiders “flying in and leaving” (N5, N9):

*They give some trainings; but their trainings didn't contain the social consciousness. It should be done by social activists, not by auditors. They fly overnight. Come here. Stay in hotel Velan and do something, write something in laptop, submit a report. Like that. Fly by night. Social auditors are involved. ... She (FWF auditor) does not really know the social issues of Tirupur. What exactly are the things. Because, we are some of the soils. We are from this area, we understand these issues. We know the concerns of the people, we know the actual problems of the people. (N9)*

Many auditors confirm this impression local CSO groups have, saying that they are rather sceptical in involving local groups into audits too much because they do not regard them as competent or trustworthy but rather as charity or campaigning organizations (A5). This is particularly the case in India, where NGOs are often connected with charity. They doubt that NGOs can provide useful knowledge and information about particular factories – although local NGOs demand more integration here – and say that local groups are rather useful for delivering more general information. Reasons given are that local groups might not be able to access factories.

Auditors are also sceptical about NGOs and see them as only trying to make money, whereas the image of a ‘good’ NGO is that of an organization working charitably with little money in a poorly furnished office (A1, A2, A8). One auditor argues that something with an NGO must be wrong, if it has an office as he has:

*If you go there, you see NGO office very luxurious. The man is sitting in an air-conditioned cabin, like me, people are waiting outside, because he is not allowing anyone to enter. This kind of .. - you will observe, and immediately know what kind of NGO that is. And some of the NGOs, very simple, you see the environment, you ask local site people; you understand this is a good NGO. (A1)*

#### **Box 11: Resistance & organization from below: Tirupur Peoples’ Forum & Tirupur steering group**

One local NGO argues that because international organizations do not integrate them, they want to protest against some international NGOs and projects (N5): “We will make a campaign against CCC, FLA, ETI, WRC and WRAP - that is the worst. All those multi-stakeholder initiatives, we will make a campaign in Europe itself, and also in North America. In two years we will go for campaign against them”<sup>110</sup> (N5). Even though this is more an expression of the anger than what is really done, the quote emphasizes that some local NGOs regard outsiders as ‘using’ locals without bringing any benefits either to the workers or to themselves, as it puts together very different organisations.

Because many local NGOs in Tirupur have been disappointed by the activities of international donors or NGOs, some attempts were undertaken to coordinate the local groups better in order to improve participation of these groups.

The *Tirupur Peoples’ Forum* (TPF) was founded by more than ten local NGOs to “create a labour friendly support system and to promote a pollution free environment”. The forum does not work with any ‘outsiders’ and with no trade unions but tries to use the local court system:

- *Now I come to why we have formed Tirupur peoples’ forum. Because we felt over the years that we were exploited by these MSI and other initiatives coming from outside Tamil Nadu. And many of our organisations were used (N5)*
- *TPF is going to talk more of creating an issue. We are not going to sit with the employers: please, please give me this, sweet chocolate. And we won't make merry cold sons. We are going to sit opposite side. And we are going to highlight the various real issues.” even if we fail, we move to the court. (N9b)*

Another example is the ‘Tirupur Steering group’ (TSG). In order to better integrate local groups into the audits, in a project the Indian non-profit consultancy Partners in Change (PIC) and the Dutch NGO Solidaridad built up the TSG “to represent the interests of the marginalized and vulnerable in the value chain in the Tirupur garment cluster”, and to give

<sup>110</sup> It should be mentioned that WRAP is a business and not a multi-stakeholder initiative. Often local groups do not distinguish.

critical comments into the social audit processes before and after an SA 8000 audit (N8). At the beginning of the project the NGOs and the employees were separated into two groups, and trained on the codes. The two groups were separated to promote a dialogue, which seemed to minimize since they had many different perceptions on different issues (N8). The TSG was accredited by SAAS. The idea was that before and after SAI-audits this group can be consulted on a voluntary basis – and later the TSG should be like a gateway to Tirupur through which every SA 8000 auditor must pass (N9b). Due to being a multi-stakeholder forum the group was said to be most credible (N8). Local NGOs criticise that the project did not move forward, that Solidaridad and PIC hold everything in their own hands, e.g. do not share audit reports, and did not integrate the local civil society groups enough (N5, N9b), and that the employers are not brought into the forum.

### **NGOs might not represent workers**

Similar to auditors, suppliers also argue that they interact with local NGOs who regularly come into their factory, either to conduct an audit or to talk to workers (S2b, S4, S6). For instance, a manager from an SA 8000 certified factory says that NGOs do an audit and report their results as a requirement of SA 8000 (S6), and another manager of a SA 8000 certified company says that he regularly invites a large local NGO to come to their unit to do an audit (S4, S10).

Some local NGOs, however, criticize that suppliers purposely select to cooperate with local groups who do not represent workers, and that SA 8000 certified factories only invite local groups that are incompetent, funded by the suppliers, focus on welfare, and sign a paper and thus provide a certificate (N9a,b, N8). One NGO that usually builds infrastructure and does not do work-related issues was included in the audits by a supplier to confirm the SA 8000 certificate (N24). This NGO even admits that the supplier funds it. However, local groups criticise that many buying companies are satisfied, if they see that a local NGO is integrated into audits, without having the capacity and knowledge to distinguish between NGOs, who are representing workers and ‘biased’ ones, who are co-opted by the companies and just write a ‘quick-fix’ report. The following quote sums up the problems many NGOs see:

*SA8000 may be inviting NGOs, who are not very harsh. They don't know what is a real labour issue. They don't understand the labour perspective. They will go and see, ok, this company is well shined, good colour is there, proper ventilation is there, ok, it is good. But they don't really interview the workers. They don't understand the reality; what is a living wage, and what is an overtime issue. And what is about the premium wage. So they don't go into the depth of the codes of conduct; ... They are more looking into window dressing. ... They [the management] will insist that you are writing letters and issue. So the management will be happy to have one more extra document to produce ... saying, see, we are certified by the NGOs, we have put everything ... So this kind of social are not really productive. It is like a quick fix. (N9a)*

### **Problems regarding trade unions**

The CCC and other NGOs argue that trade unions must be integrated into audits, but interaction with local trade unions is very limited. Many auditors, companies and also NGOs say that they do not interact with them or that it is very difficult to do so – either because there is no trust or because it bears too many conflicts to work with them. One NGO explains this problem where the FWF tried to integrate local trade unions in Tirupur into social auditing, which did not work out:

*He asked the trade union members to form a committee, and within the committee two or three people should be elected. From the committee, two people can be part of the audit. But .. see, we also make some mistakes. So these trade unions never agreed to form a committee, number one. ... So this is always some kind of fundamental mistake I have experienced the last 10 years with the unions. ... So even now the steering group, they don't want to elect one ... because even seven or eight years back I remember. Save was one of the first initiatives to form a trade union dialogue on several issues. It was always - 10 years back - that trade unions never can make a meeting together. ... we have suggested to form a committee of trade unions. They never agreed, and it was a bit allegation against Save: who are you to tell to form a committee. What subject are you going to do. ... they set no committee. ... why we have to form a committee. It isn't a very much futuristic approach. Why we*

*have a committee. You can deal with each union as respectable organisation. ... Even after their approach, again three years back, we were attempted to form a committee, and the bigger unions allege, if the smaller ones were elected, then we have to honor him - which is not possible. The smaller will allege: ok, the bigger ones are being elected by choice - the bigger ones always keep the smaller ones away. So the smaller ones say, we don't want the bigger ones. The bigger ones says, you are organising 100 people, why should I have to administer him. (N9b)*

### 9.3.3 Summary and conclusions from the findings

Even though most actors say that local groups have to participate in audits, the ideas regarding how they should participate are very much contested. Central problems regarding the participation deal with different viewpoints on issues like power and trust and the value of local knowledge:

- **Include workers:** Both initiatives argue that workers have to be integrated into audits. However, the views conflict on where this should be done, particularly whether this should be inside or outside a factory. One perspective argues that inside a factory workers do not tell the truth, because of the prevailing power relations between workers and managers. Even if workers trust auditors, they are afraid to tell the truth inside a factory, because they fear that the management will know about them talking. According to this perspective knowledge about the working conditions – apart from visual issues like fire exits – inside a factory can best be yielded outside a factory. According to a second perspective, workers must be interviewed inside a factory because the trust relationship between the lead agents and the factory managers must not suffer. Power relations inside a factory are ignored in the second view.
- There is a conflict of **trust** within the supply chain and within the vertical relationships of global production networks. Brands claim that they need to keep up a good relationship with the managers of the supply factory, and therefore they would not make them feel that they do not trust them, e.g., by interviewing workers inside their factory. However, NGOs and local groups claim that workers do not trust anyone coming from the outside that they do not know. In their view too much proximity and trust with the management limits the workers' trust. In addition, even the FWF has problems integrating local NGOs working on workers' rights, because they fear that they do not treat the information they gain in the factory confidentially.
- **Differentiate local groups (NGOs / trade unions):** The findings suggest that one problem of participation is that there are many different local NGOs and that most actors have a different perspective on them. Local NGOs that were interviewed see themselves as working on and with the workers, some cooperate more with companies working on charity issues, whereas others cooperate more with international NGOs like the CCC and are worker rights' groups with a close contact to the workers. Some local groups view international NGOs critically, because they do not see how they are integrated into their work or improve the local situation. Producers are said to use and fund NGOs, which are then seen as *biased, incompetent* and *not to be trusted*. Auditors regard local NGOs as *charity or campaigning groups* with no access to factories and thus no knowledge of working situations or as *corrupted* groups with a lot of money that cannot be trusted. International NGOs also

differentiate between NGOs that work more on *campaigning* and that have an internal conflict when they audit, but that are knowledgeable due to their contacts to the workers and *biased NGOs* that are funded by companies. Brands, some claim, are not able to distinguish between these different types of NGOs and run the danger of cooperating with groups that do not represent the interests of workers. Trade unions are seen by most as difficult partners to work with and often corrupted and not interested in the workers and rather competing with each other. However, there are also trade unions that are independent of party politics and that cooperate with workers, and various stakeholders say that these have to be involved.

- **Participation of local civil society groups in auditing:** Actors struggle over the question: What is meaningful participation? This struggle is connected to the variety of NGOs and different viewpoints on which NGO to trust. One perspective holds that auditors need to be knowledgeable of the local situation and culture and need to collect information. In this perspective, local knowledge can be codified and gained by external actors. They do this by talking with the local groups about the general situation and interviewing workers inside factories. In this view, local campaigning NGOs provide more general information and not the relevant knowledge about the situation inside the factories because they have no access. In contrast, the second perspective (local NGOs) argues that companies and auditors do not respect local groups sufficiently. They claim that local NGOs can provide a special connection to the workers to yield relevant information from the workplaces. Only those, who are “of the same soil” and who have permanent contact to the workers can gain this information. In this view auditors flying in for a quick factory visit will not yield in-depth information about the problems of workers, even if they speak the same language, because workers will not trust them and fear punishment by the management. They conclude that participation of local groups has to go beyond informing auditors about the general local problems and culture.

## 9.4 Power, audit costs and responsibility

Social audits are a nuisance to lead agents and the suppliers. Lead agents have to force an audit upon their suppliers with whom they try to develop relationships that are built on trust, and they also cost time and a lot of money. Then the results of an audit only identify the non-compliances in a factory – and sometimes the causes (→ CH 3.2 & 3.3). Suppliers often complain about multiple audits, because the lead agents do not coordinate their audit efforts. Finally, stakeholders criticize social audits for not being credible. However, various stakeholders demand brands and retailers to prove that they take responsibility and improve the workplace situation in their production factories. This is why audits are undertaken.

In this chapter I show that the power of lead agents vis-à-vis their suppliers and audit costs are seen as a limitation to taking responsibility for working standards in their supply chains (→ CH 9.4.1), and that actors use different strategies to reduce costs of auditing (→ CH 9.4.2).

#### **9.4.1 Supply chains, power and responsibility**

Almost all actors share the view that the power of lead firms depends on their relationship and is limited if their orders only make up a very small share of a factories' capacity. For instance, an auditor says that the quality of an audit can be bad if he controls a factory on behalf of a company that only has a tiny percentage in that factory (e.g. 5%) (B7). In such a case, the auditor even fears that he has difficulties to enter the factory, because the buyer is more dependent on the supplier than vice versa (A5). For this reason small companies (B22, B24) that are not involved in an auditing programme fear that it might become very difficult for them to demand an audit from a factory in which they only produce e.g. 100 pieces – and it might become even more difficult to tell this factory to improve the standards (B22). In contrast, a buyer placing orders of 100.000 pieces, says that he has no problem getting a supplier into audits and qualification, compared to a buyer who only orders 800 pieces (B6).

However, one small company argues that due to their size it selects factories in which larger companies with a reputation place their orders, trusting that they do good audits (B24). Some brands and retailers also claim that the power they hold over a producer is also low if they do not have a direct contract relationship with a producer, e.g., if they work through agents or if the supplier subcontracts (→ CH 2.2). Some lead firms argue that because of their lacking power in the whole supply chain, they cannot implement the standards throughout the whole supply chain and therefore cannot be seen as responsible for the working conditions of particular producers.

Whereas many interviewees see power as a necessary requirement for audits, one auditor argues that an audit need not always be based on power, but that it can also be based on trust (A6). She explains that social audits must be communicated properly, if they shall not destroy the business relationship; particularly buyers must not fear negative consequences from an audit, which would provide incentives for factory managers to cheat on auditing. However, NGOs point to the problem that a too good relationship between the auditor and the factory management can reduce the workers' trust in the auditors and make them tell lies.

#### **9.4.2 Strategies to reduce costs of audits**

Companies and initiatives use diverse strategies to reduce the costs and increase the efficiency of auditing. While both initiatives recommend their members to vertically integrate their supply chains and work on harmonizing standards, the BSCI mainly works through limiting the responsibility of members for their suppliers.

##### **Limit lead agents' responsibility in the supply chain**

It is disputed how far lead agents must take responsibility for auditing, and BSCI and FWF follow different strategies (→ CH 9.4.1 & Table 15). How do they legitimate their different approaches? I argue that due to the history and background of the FWF (→ CH 7) it regards a more comprehensive scope to auditing as more relevant than problems related to the complexity of the chain. The approach of the BSCI is rather cost minimizing and risk oriented. It mainly requires that non-compliances are somehow dealt



with, but not necessarily by the BSCI member. The BSCI and lead agents use two different strategies to reduce the responsibility of lead agents in the supply chain: limiting the scope of auditing in the supply chain and limiting the percentage to be audited.

**Table 15: How far does the lead agents' responsibility extend?**

	BSCI	FWF
How far does responsibility in the supply chain extend?	Direct suppliers	The whole garmenting chain, i.e. all 'knitting' processes
Basis of the responsibility	Direct business relationship	Problems in the chain
Who is obliged by the rules to audit the direct supplier?	Buyers	Buyers
Who is obliged by the rules to audit the subcontractors?	Suppliers	Buyers
Transparency regarding supply chain	Lead agents cannot force suppliers to disclose their suppliers	Lead agents must force their suppliers to disclose their suppliers.

### **Limit scope of auditing in the chain**

According to one position, a lead agent is responsible for working standards in the factories of its direct suppliers, i.e. in the company where they place the orders. This company is again responsible for his suppliers. The BSCI follows this approach (→ CH 7.2.3). The arguments behind this approach are based on the complexity of supply chains, efficiency and power.

*Das System ist zu komplex. Die Zulieferer arbeiten wieder mit Unterauftragnehmern zusammen und diese wieder mit Zulieferern. In diesem Produktionsnetz kann es ein Loch geben. Wir können lediglich einen Prozess in Gang setzen, der bei den Hauptlieferanten beginnt. (Ferry den Hoed, FTA, EU-Nachrichten Nr. 43, 1.12.2005)*

Companies argue that it is too much effort if they had to implement social standards in all of their complex chains. Some substantiate their argument by saying, e.g., that they sell 800.000 different products, for which they simply 'cannot' check the whole chain (B3, B6). Due to the complexity of the supply chains most buyers claim to be 'practical' and do "first things first" (B3, B8). According to many, this practicality stops where they do not have any power anymore, where it is not 'possible' anymore, or where it gets too costly. Hence, the BSCI simply take the responsibility where they have a business relationship.

*Somewhere we need to stop. It has to be practical. (B3)*

*My question to you is then: How far should we go? To the farmers raising the sheep in new Zealand? ... Or fertilizers, or whatever grains? So I think that is the issue. I am not saying that that's that - I mean what you are saying, that is one reason why we are going to the factory suppliers with this cleaner production projects. To see how we can address that problem. So, valid point, but it is not easy. And maybe you should do first things first. That is another approach. If you start here. (B8)*

To extend the auditing throughout the chain and at the same time keep auditing costs for members low, in 2009 the BSCI audit rules changed (→ CH 7.2.3). Because of this new rule the membership of BSCI rose strictly. Some importers who supply BSCI members complain that their buyers more or less forced them to become a member in the BSCI system. The same suppliers said that they now forward the power to their suppliers, who have to pay for the audits. This is seen as shared responsibility: "everyone has to take some responsibility" (S15). Eventually, according to this system a retailer in Germany

who is a BSCI member and who sources from importers in Germany only has to assure that his importers are BSCI members and need not change anything in his sourcing. Some BSCI members criticize this (B23).

In contrast the FWF claims that their members can influence all producers in their ‘own production’<sup>111</sup> and therefore also share a responsibility to audit and improve these garment suppliers (→ CH 7.2.3). If a members’ power to implement a standard at a producer is limited, because he might source through an agent, this is not seen as an excuse for not auditing the standards. The member can change the suppliers or he can try to cooperate with other members or companies in the audits (FWF 2008d:11). Similarly the CCC argues that lead firms have no reason not to implement social standards, they should just make the standards as important as quality standards or shift its production to a smaller supplier (→ CH 9). However, going further down the chain than garmenting is regarded as too much, due to the history of the FWF that originates in campaigning activities by the FWF:

*Even within a simple shirt, the kind of fabric you use moves with the fashion. And sometimes you have to buy it from that weaving company, and sometimes from a totally other. ... The chain is just too complicated to move deeper down. And it would be very interesting to discuss, e.g., what could we do in the textile part of it? What can we do in the spinning part? But there is no direct connection with the brands. So the consumer-push on it is not feasible anymore. (FWF 2008d:29)*

*Priorisierung ganz notwendig; der Konfektionierer ist drin in diesem Programm, ganz klar. die Stufen des Wertschöpfung, die selber unter seinem Dach vereinigt, auch. Wenn er eine eigene Färberei hat, ist sie natürlich auch mit drin. Dann die Subcontractoren, die er einsetzt. Nicht die Zulieferanten von Stoffen oder Knöpfen oder Reißverschlüssen, sondern das sind ja die Teile des Auftrags, die häufig vergeben werden, weil seine eigenen Kapazitäten erschöpft sind, aus welchen Gründen auch immer. Subcontractoren sind also auf jeden Fall drin, weil das fertige Textil ja nun wirklich - das ist ja völlig egal woher das dann kommt, aus seiner eigentlichen Produktionsstätte, die uns gemeldet ist, oder aus seinen zwei oder drei Subcontractor-Produktionsstätten. Also die müssen auf jeden Fall mit rein. (B6)*

### **Limit number percentage of suppliers being audited**

A further method to reduce auditing costs is to reduce the percentage of suppliers that have to be audited. The reasons given for this strategy refer to practicability considering the flexibility of global sourcing. BSCI and the FWF use this strategy. However, BSCI prescribes its members that 67% of suppliers have to be involved in the audit process, whereas the FWF says that 90% have to be audited (→ compare CH 7). Particularly the BSCI allows members not to audit suppliers that they only keep for one season and thus allows for some flexibility. For instance, one member explains that they only audit a supplier if they have worked with it for several seasons and they are sure that they want to continue working with them (B4).

### **Development-oriented approaches**

Finally, the BSCI and the FWF both frame their approach as ‘development-oriented’, which is important as it gives the members and their suppliers time to implement standards. The CCC criticizes that this framing, combined with a limited transparency regarding the single companies, reduces the possibility to make single firms accountable. It complains that the BSCI is not transparent regarding each single member and their factories, and thus no one can verify or falsify the claims done by the BSCI (Merk 2008).

<sup>111</sup> ‘Own production’ is the production in all factories that manufacture products which are commissioned by the FWF affiliate, directly or through an agent or other intermediary, normally to the design of the FWF affiliate.

The BSCI argues that the approach is ‘practical’ and says that it respects the difficulties suppliers face in meeting social requirements within the “intense competitive climate” in the global markets (BSCI 2007a:3). Thus, the BSCI admits that “in almost all countries” some major non-compliances still exist and argues that this is normal in what they term ‘risk countries’ (BSCI 2007a:20). Similarly the FWF argues that the approach recognizes the members’ business realities. The development-oriented approach is designed in contrast to ‘policing’ or ‘pass-or-fail’ systems that cancel relationships with suppliers who do not respect codes, and is criticized for that. This approach acknowledges slow progress in the improvement of working conditions (BSCI 2007a:8):

*Wenn Sie jetzt fragen, haben die alle bestanden, dann ist das natürlich nicht so ... wenn Sie in solche Risikoländer gehen, dann ist das ja gar nicht denkbar, dass die den ersten Audit bestehen. Dann werden mindestens 70 bis 80% erst mal durchfallen und müssen sich dann einem Re-Audit unterziehen, ... und dann werden die auch angeleitet, d.h. es werden Schulungen durchgeführt, damit sie wissen, woran es gelegen hat, und und und... Was eben dazu geführt hat, dass heute 100% unserer Lieferanten heute in dem Audit Prozess drin sind. (B3)*

### **Let the suppliers pay audits**

The CCC criticizes that some companies reduce audit costs by letting others pay:

*Labour advocates have long argued that suppliers and buyers have a shared responsibility for the costs of compliance—if they start sourcing from a factory that is not compliant with a code, then the buyer should bear some of the costs of bringing the supplier into compliance. Initiatives such as WRAP and BSCI, however, tend to shift audit costs to the supplier. (Pruett 2005:70)*

In the BSCI buyers and suppliers have to agree on who pays the costs for the audits and corrective actions. If the buyer is powerful, he can transfer the costs to the supplier. Not every member misuses this, as the CCC fears. A stock-listed company (B3) claims that they could not justify costs of a social audit against their shareholders, and argues that a privately owned company has less difficulty with that, as it only has to justify the expenditures with their own conscience. However, privately owned companies are also in a competitive situation, in which they have to reduce costs, and having suppliers pay for audits is an easy way to reduce costs. Having said this, another stock-listed BSCI member argues that his company prefers to pay audits themselves, because they will have the ownership of the audit information and thus more control over an audit and the supplier (B5). It argues that this way they can better talk with the suppliers about improvements, and know where the supplier stands with his implementation. Members of the FWF pay for audits in order to take responsibility.

### **Harmonize codes and share audits**

Social auditing has been strongly criticized for not harmonizing codes and auditing approaches. This has led to inefficient private regulation systems, it has created a whole auditing industry with huge costs, particularly for suppliers (→ CH 2).

Most suppliers and NGOs criticize that buyers do not harmonize their codes of conduct and that in consequence, suppliers have to pay a new audit for every buyer, which is not efficient and does not add value. Some argue that 95% of the contents of the different CoC is the same, only in different words, but the rules, procedures, and communication channels are different for each buyer (S4, S5). Also NGOs and consultancies argue that suppliers are confused about the variety of private and public rules and standards (A2, N7, N9a).

*It is extremely frustrating, expensive, time taking for us to cater the demands of 18 different customers who come at 18 different times, and do the same thing again and again and again. What we really wish for is a common standard which will be acceptable for different buyers. And we have petitioned our own government for that. But why doesn't the government define a particular agency, which is a certifying agency. ... We don't have to go through the same thing. We go through compliance inspections every second week. It is a huge expense. ... some of them are staying two or three days here. Some of them walk in, in a surprise, completely unannounced. You know, you have to be ready for them. They want to speak to your supervisors. It takes a long time. You are running a factory, and suddenly they want to talk to them, sitting in closed doors and talking to them. (S5)*

Suppliers particularly criticize the confusion with private standards, particularly as they are obliged to stick to national laws anyway (S2, S5):

*They think that this is a waste of their time, confusion of all these clients. Better, if there is an approach of integrated code. Some singular kind of standard, so that the same standard can be applicable for all kind of factories. (A1)*

*Everyone is doing his own thing, and in the factory with multiple brands, they are going crazy. Because they say, why don't you all get together and tell us one thing. And let us do what you guys want, but follow one standard. (A2)*

Particularly suppliers that have many customers from different countries complain about the so-called 'audit fatigue' and say that they are audited up to 50 times a year (S4, S5, A2, A3, A5). NGOs similarly argue that this is a waste of money, considering that audits do not change the situation of the workers but only raise awareness, and that the multiple different codes that all want the same thing only confuse factory managers (N7). An auditor sums up these problems as follows:

*If I (as supplier) need to get certified to WRAP, I need to pay 1.000\$ registration fee. And I need to pay annual fee of 750\$. Which is a lot of money for a small supplier. Vis-a-vis, if I need to get certified to, say, SA 8000. I will probably spend over a three-year period ... So if I am having 100 people in my organization, and this is my turnover, I am going to definitely think whether I am going to do this or that. And then, the other thing is the cost of auditing itself. ... So if you have multiple standards, I am going to think, do I need to spend money on everything? Because the overlap is very high. If you take SA 8000, FLA, WRAP, BSCI and things like that, the basic promise ... you can't have child labour, forced labour, safety, and things like that. Only some differences are there. ... If I am supplying to multiple buyers, e.g. Walmart, Disney, and ... It goes to the roof. Spending 30% of my time (A3)*

The FWF and the BSCI both try to counter the audit fatigue. The BSCI does this by building up a database. If a member enters a new supplier into the database he is automatically informed by the BSCI, whether this supplier is already audited. The FWF also strives at this, but so far has not built up a database. One excuse is that this will be done but that the buyers fear disclosing their suppliers. However, disclosing can also save costs. The FWF points out one example, where two members cooperate regarding one supplier, e.g. by sharing costs. It depends on the member, whether it is seen as a competitive issue. Additionally, the FWF argues that it also accepts other audits. For instance, if the FLA has conducted an audit in a factory of a FWF member, this member need not do an audit, if the member regards the audit as sufficient. It is more likely that a report by an MSI is accepted than one by a business initiative. The FWF argues that the member has the responsibility to decide by himself, whether this audit is sufficient. Member companies criticize this and demand more transparency in the rules regarding what audits are accepted.

Two more reasons are given, why harmonization of codes of conduct and audits are regarded as difficult. One reason points to differences in the national laws of the members' countries, why, e.g., European initiatives and US-American initiatives are difficult to harmonize. Another one is that due to the lacking trust in other audit methods,

there is always mistrust in the audit reports of other companies. An interviewer from a big brand said that he would not simply accept another audit report:

*In terms of sharing a report, even if I got a report, I would still probably do an audit by myself. So they might have left something, which my workplace standard is strict about. They might be flexible about some issue, my brand might not be. So as in that case also, sharing audit reports is not something 100% I would do. (B9)*

#### 9.4.3 Summary and conclusions from the findings

This chapter points out that there are struggles regarding the following issues:

- **Responsibility:** NGOs argue that lead agents are responsible for good working conditions in the production factories in their whole supply chains. In contrast, the BSCI and their members argue that the complexity of their supply chains limit how much responsibility they can take. It is argued that auditing too many suppliers is too costly and that due to power relationships not all producers can be audited. BSCI members thus only have to initiate audits at their direct suppliers, whereas these are responsible for their own suppliers. Thus, the responsibility is passed down the supply chain. The FWF, in contrast, argues that the members are responsible for the whole garmenting supply chain and have to disclose and audit all producers that sew clothes. Excuses that auditing is too costly or that members hold no power over factories are not accepted. This view originates in the history of the initiative that stresses that the whole chain is important.
- **Audit costs:** The CCC claims that lead agents should take responsibility by also paying for audits. FWF members have to pay their audits, and this is explained by arguing that the members share a responsibility for improving working conditions. The BSCI allows the members to shift the costs for audits to the supplier and also argues that responsibility should be shared in the supply chain. BSCI members can shift all costs for auditing and implementing standards to the suppliers. Suppliers complain if they have to pay for audits, particularly when different lead firms demand different audits.
- **Saving audit costs:** Lead agents try to save audit costs by only auditing some of their suppliers and by passing costs of audits to the suppliers. The latter strategy, however, conflicts with views regarding the independence of audits (→ CH 9.1).
- **Harmonizing audits:** Producers complain that they are audited too often and criticize brands and retailers for not harmonizing the approaches. NGOs also complain that there are too many audits and that there is too much focus on audits. They criticize this focus, as audits alone do not improve working conditions. Private standards initiatives basically try to harmonize codes and audit approaches among different brands and retailers. However, because private standards initiatives are strongly embedded into national contexts of the country in which they were developed, there are still many different approaches, and even if brands are members in an initiative, they sometimes have their own audits in addition.

## 9.5 Discussion and conclusions

The analysis in this chapter suggests that there are different views regarding what ‘good’ social auditing is and how brands and retailers must take responsibility through social audits. Main differences refer to the questions, who conducts social audits, how local stakeholders are involved, and what responsibility for auditing lead firms have.

I argue that the concepts embeddedness, value and power help in understanding different arguments used for framing audits as ‘good’ or ‘bad’.

I suggest that there are two different approaches to social auditing. The first approach strongly legitimizes the credibility and effectiveness of audits with concepts of network and territorial embeddedness. It is a more discursive approach to CSR and gaining legitimacy, and it is followed by the FWF (→ CH 3.1.4). The second approach rather legitimizes the credibility and effectiveness with concepts referring to value and power. It is rather based on a ‘positivist’ approach to CSR and gaining legitimacy and followed by the BSCI (→ CH 3.1.1).

### Political or discursive CSR approach to auditing

I claim that the first audit approach is strongly based on **discursive/moral legitimacy**, even though it might fail to gain it due to some limitations. Some actors frame the credibility and effectiveness of audits with vocabulary that refers to concepts related to embeddedness. In this view audits must be based on **local knowledge**, and the local knowledge must be gained through networks with local stakeholders whom workers trust. Credibility and effectiveness are based on trust in networks and people. It is argued that due to corporate power against workers inside factories (including cheating), an audit and worker interviews inside a factory can never gain insight into the real situation. However, outside a factory in the communities workers have collective power. Trust relationships to other workers can be build up better. Local NGOs say that they have the understanding of the local backgrounds and culture of the workers, because they are “from the same soil”. This way audits can provide information from the factory floors that is relevant for identifying non-compliances with process-oriented rights like freedom of association (→ CH 3.3). More visual issues, e.g., questions whether the toilets are clean or whether a fire escape exists, can be identified through factory visits.

There is a conflict regarding **which stakeholders shall participate** in what way. This conflict is connected with trust in the network relationships: Basically, actors have different opinions regarding who can and need to be trusted for gaining information from the factory floor. There is obviously a conflict in trust to the workers and the factory management, according to which it is difficult for an auditor to gain both, trust of the managers and of the workers. If auditors need to cooperate with workers *and* managers, this conflict becomes problematic. Some suggest that interviewing workers outside the factories might solve this problem. For different reasons auditors do not trust every local NGO and also MSI do not trust all local NGOs. The local NGO must be (financially) independent from the factory it checks and must support the needs of the workers – but the FWF argues that it should not be involved in campaigning for being independent. This leads to a situation where local NGOs that are connected most to workers might not

get involved in auditing because the auditors do not trust that they will keep the information confidential, despite their expertise. Thus, local groups criticize every private standards initiative for not integrating them enough and confirm results of other studies (→ CH 3.3).

Local NGOs suggest that a ‘good’ approach to auditing would need to interact with them, because they connect with the workers – which would consider ideas of the discursive approach to CSR. However, this would need **transparency** of the audits, which is not given. Many local NGOs complain that auditors talk to them, but that they do not tell them what factory they audit, neither BSCI nor FWF auditors. Hence, the question is, what involvement of locals and how much transparency would an approach need to be legitimized in a discursive way. The analysis suggests that although BSCI and FWF somehow involve local stakeholders, they are still away from a political approach to auditing that would be legitimately called discursive (→ CH 3.1.4). The FWF argues that the right networks and the fact that they are multi-stakeholders provide credibility for audits.

#### **Positivist CSR approach to auditing**

A second approach also emphasizes that the local context is important for social auditing. However, in this approach the inclusion of stakeholders has a different quality than in the first one and transparency to stakeholders is non-existent. I claim that the arguments of this second approach are based on pragmatic and cognitive legitimacy rather than discursive/moral legitimacy (→ CH 3.1). In my view the BSCI follows the second approach.

The arguments defending this audit approach aim at gaining **pragmatic legitimacy**, according to which the key challenge for the organization that tries to gain legitimacy is “to persuade key stakeholders (and the wider public) of the usefulness of its output, procedures, structures and leadership behaviour” (→ CH 3.1.4, Box 2). The BSCI frames auditors as independent and neutral, because they work according to good methods. The claim is that the required information from the factories can best be yielded, if the auditors follow certain quasi-scientific methods and techniques. Auditors are knowledgeable of management systems inside factories, because the underlying argument is that workers’ rights violations are based on lacking management skills. Problems in the factories are seen as technical (i.e. the bad factory management), requiring a technical solution (i.e. sound management). Stakeholders are involved in a ‘consulting’ way in order to show that these groups are involved (These individuals will ascribe legitimacy to the corporation as long as they will benefit from the corporations’ activities). The inclusion is merely based on gaining information, while not political responsibilities or duties are connected to it. Finally, aggregated results are presented like scientific facts in diagrams and statistics that sound very impressive and that may please stakeholders and the general public, even though they suggest results that their own system does not even promise (e.g. showing results on freedom of association although it is stated that audits cannot identify such issues). These aggregated results do not allow any discussion about single companies. However, the message is that the results can be trusted, because they are based on standardized reasoning, and progress is developmental. The BSCI argues

that the evidence of the audit results ‘proves’ that working conditions in the factories improve because the right systems are used.

The arguments are further based on **cognitive legitimacy**, which bases acceptance “on some broadly shared taken-for-granted assumptions (e.g. shareholder value ideology, free and open market narratives, normative homogeneity)” (→ CH 3.1.4, Box 2). Many of the arguments of the BSCI are based on the need to remain competitive and efficient, or of their lacking power in complex supply chains – and the need to approach these problems in a developmental way are based on the need to survive in a competitive market. However, the FWF demands from the members to audit the whole supply chain and does not allow compromises on this. Furthermore, the BSCI approach is based much more on efficiency than the first one. The buyers’ responsibility for audits is limited to the direct relationships in the supply chain, while the supplier will usually pay the costs of discharging responsibility.

Finally, the BSCI audit approach is far from gaining **discursive/moral legitimacy**. Auditors consult local NGOs to better understand the general background but do not disclose the information regarding what factories they visit. Workers are usually interviewed inside the factory, where they fear the power of the factory management and fear that they might be fired if they say something wrong. This lack of participation and transparency in auditing does not allow decisions between the different stakeholders that would be based on the better arguments. The hiding of the audit results and the lack of real involvement of local groups rather suggests that this approach does not aim at gaining discursive/moral legitimacy, but rather pragmatic legitimacy.

#### **Social auditing: Making problems visible**

There is a large consensus that audits can only identify problems of workers in factories or the causes of these problems, but that they do not change the situation. The CCC and other stakeholders criticize the over-reliance on social auditing by some companies or initiatives like the BSCI. Most actors conclude that audits need to be combined with other instruments to inflict change: “Given the amount of resources and thinking and tackling the difficulties faced by workers in supply chains over the last decade and a half, the lack of progress to date is scandalous” (Pruett 2005:74). This confirms results by others (→ CH 3.3), who showed that audits do not change the workplace situation, unless they are combined with other instruments. Such other instruments are discussed in the next chapter.



# 10 Executive regulation in global production networks

The previous three empirical chapters show which rules and standards private standard initiatives set, how they set them, how they try to make sure that the suppliers comply with the rules – and how these activities are contested between different actors in global production networks. Legislative and judicial regulation are common practices firms use to improve the working conditions in supply chains. However, chapter 9 concluded that many actors claim that merely setting standards and monitoring them is not effective and does not have any positive impact on the working conditions (→ CH 2). This is where executive regulation becomes relevant.

Executive regulation deals with “the processes of standard implementation and the different tools that are used by the private standards initiatives to ensure that standards are met” (Tallontire 2007:786). There are three main claims what companies must do to improve working conditions in supply chains in addition to having their suppliers sign a Code of Conduct and audit it:

- **Buyers must change their purchasing practices.** In a nutshell, the argument mainly presented by the CCC / civil society organizations and suppliers and adapted by the FWF rules goes as follows: Lead firms in global supply chains hold power over their suppliers and use it to demand low prices, short lead time, high flexibility, high quality, high social standards etc. Their suppliers cannot fulfil all of these demands at the same time. They have no other option but to focus on what is most important, e.g. quality and prices, i.e. workers end up as victims (→ CH 10.1).
- **Management skills of the suppliers** must be built that enable them to run a factory efficiently and to implement social standards. It is argued that many managers know little about efficiently running a factory. More management knowledge would help them to organize their factory better. This would increase their profits, which they could use to finance the implementation of standards. In consequence many problems would not occur. Both, the BSCI and the FWF do capacity building in factories (→ CH 10.2).
- **Workers must be empowered** to enable them to claim their own rights. It is argued that workers do not and cannot demand their rights without support. The right institutions and set up (e.g. mature systems of industrial relation) would enable workers to demand their rights, which might one day render audits useless. The empowerment of workers is not seen as an exclusive alternative but as something that should be done in the long-term (→ CH 10.3).

Although the strategies are in the best case additional, the rules of the FWF focus on changing the purchasing policies of their members in Europe, whereas the BSCI rules focus on qualifying the suppliers in the production countries. These focuses are strongly

connected to where the initiatives see the main responsibility for action and change. **The following three sub-chapters analyse the arguments actors present in support or against one of these options.**

## 10.1 Purchasing practices

This chapter discusses how different actors see the relationships between purchasing practices and power in supply chains and how they connect this with lead firms' responsibility. There are two main arguments. On the one hand, mainly NGOs<sup>112</sup> criticize that lead agents have power in supply chains and that they therefore are responsible for workers. They argue that purchasing practices prevent suppliers from implementing social standards and instead make suppliers exploit workers (→ CH 10.1.1). On the other hand, companies claim that their power is limited mainly by the complexity of value chains (i.e. transaction costs), the demands of the fashion market (i.e. particularly consumers) and also factory capacities (→ CH 10.1.2). Both viewpoints propose different solutions for improving working standards. Table 16 provides an overview of the main arguments.

**Table 16: Main arguments claiming that lead agents' purchasing practices disable suppliers from implementing social standards (own design)**

	Argument	Possible solution
<b>Purchasing practices, power and buyer responsibility</b> → CH 10.1.1	<ul style="list-style-type: none"> <li>• Buyers are powerful, they set social standards, prices, lead times and select the supplier</li> <li>• Buyers' power makes them responsible for working conditions - but: buyers make profits on the back of workers</li> <li>• Buyers' demands are conflicting → suppliers cannot implement standards, they cheat, exploit workers etc.</li> </ul>	<ul style="list-style-type: none"> <li>• Buyers must adapt their purchasing practices to the suppliers needs → select suppliers, partnerships with suppliers, pricing strategies</li> </ul>
<b>Limits of power &amp; responsibility in purchasing</b> → CH 10.1.2	<ul style="list-style-type: none"> <li>• Implementation too costly and no capacities in the supply factories → reduce complexity of supply chain &amp; qualify producers</li> <li>• Fashion requires quality / low prices</li> <li>• Fashion requires flexibility</li> <li>• Factory managers do not know how to run a factory</li> </ul>	<ul style="list-style-type: none"> <li>• Reduce flexibility</li> <li>• Qualify factory managers</li> </ul>

### 10.1.1 Purchasing practices, power and buyer responsibility

This chapter presents how mainly NGOs criticize purchasing practices and make lead firms responsible for poor working conditions. They have three main arguments:

- First, lead firms hold power over their suppliers. This derives from their flexibility in selecting suppliers, i.e., that they have the power to select their suppliers.
- Second, due to their power, lead firms share a responsibility for the wellbeing of workers in their supply chains.

<sup>112</sup> Not only NGOs argue this way, but also suppliers, auditors, and some companies. The FWF implements rules and systems to prevent deal with this problem, whereas the BSCI does not have any rules or systems.

- Third, while companies claim that they take responsibility for working conditions in supply chains, NGOs criticize that the purchasing demands of lead firms are often conflicting. As a result, the producers cannot implement the social standards and the workers suffer.

As a possible solution to these problems NGOs demand that buyers need to adapt their purchasing policies. This helps to ensure that background conditions are created which enable suppliers to implement standards. The FWF does this, but not the BSCI. The remainder of the chapter presents the arguments in more detail.

### Lead firms hold power in supply chains

The CCC argues that particularly large lead firms hold power over their suppliers and has been focusing accordingly (→ CH 2). The CCC criticizes that large companies use their economic power to gain good terms of trade (prices, lead time, quality) and make profits, but do not use it sufficiently to improve working conditions. Accordingly, large lead firms are framed as the oppressors in a supply chain, who determine the purchasing conditions for their suppliers, and suppliers as passive victims “at the mercy of buyers”, who are only able to accept or turn down orders (CCC 2008:48). This argumentation is most evident in the context of the CCC critique against “giant retailers” and discounters (→ compare: Box 12). The ‘Cashing in’ campaign uses the picture that workers “subsidize” retailers’ profits with low wages and bad working conditions:

*The business models that make the Giants’ everyday low prices possible rely on subsidies from millions of people around the globe. For women working in garment factories, these subsidies are in the form of poor conditions and terms of employment and poverty wages - subsidies that they cannot and should not have to afford, and which are largely imposed on them by economic necessity. (Hearson 2009:12)*

While the International Secretariat of the CCC focuses on the power of large companies, the 12 National Sections of the CCC in Europe mainly focus on companies in the own country, also including the smaller ones (N22). The power of lead agents is seen in fixing prices, lead times and sourcing flexibly.

#### Box 12: ‘Cashing in’ – a CCC campaign against large retailers’ purchasing policies

The ‘Cashing in’ campaign against large discounters focuses on the low working conditions in factories supplying to Walmart, Tesco, Carrefour, Aldi, and Lidl. It argues that these five “giant retailers” are making huge profits because they exert power on suppliers and workers in the value chains, whereas suppliers and workers are presented as victims with no choice but to accept the situation. The following quotes from CCC reports illustrate this:

- *Giant retailers favor purchasing practices that aim to get the maximum flexibility and the lowest prices from their suppliers. At the same time, they say that they are improving the systems they have in place to enforce their codes of conduct on labour rights. These two factors are frequently in tension, because the Giants’ purchasing practices create a number of pressures that are bad for workers. (Hearson 2009:7)*
- *Purchasing practices that increase pressure on suppliers are only possible because of women workers’ disempowered, disadvantaged position, which means they have no option but to accept whatever conditions of employment are on offer. (Hearson 2009:5)*
- *How is it possible that those big retailers are seeing massive profits and increased market share in the garment sector? The answer is simple: because the workers in their supply chains face increasing poverty, appalling conditions, and serious workers’ rights violations ... Women and their families are subsidising the profits of giant retailers through bad conditions, poor terms of employment, and poverty wages. (CCC Spring 2009:8)*

### Prices

NGOs, suppliers and auditors criticize that buyers make large profits and pay the lowest prices in the market without adapting their prices to allow suppliers to implement the social standards. Suppliers criticize that buyers bargain on the price but do not support

them to improve the situation. They rather threaten not to place orders the next year, if the compliance situation has not changed. One factory manager argues that compliance costs money and that they cannot comply without any financial support (S2):

*We find that buyers are very keen to tell us what to do and what not to do. But not very keen to helping us with the alternatives. ... You see, compliance actually costs money. To put in a system, to implement it, costs a lot of money. And at the same time, the pressure on pricing is very very tight. Every year there is a discounted price, 10% less than the previous year. I mean, you go on, where is the off-set. You know, you want to make money, you want to be a profitable business, you want to take care of your employees. And you want to deliver a good product to your buyer. And then you also end up in losing money in your compliance. And further losing margins. We feel that buyers are inflexible when it comes to pricing and compliances, it is not mutually exclusive, but then you need support. (S2)*

In this context, the CCC demands that companies have a duty to report how they overcome this problem:

*While actual price data is considered competitive information and therefore confidential, companies should report on what safeguards are in place to ensure that prices are sufficient to allow compliance with CoC provisions, including wages that meet workers basic' needs. (CCC 2009b:14)*

Similarly, the CCC criticizes that large discounters “shamelessly take advantage of their immense power”, dictate prices and drive them down in the competitive market and are “primarily motivated by the lowest price for the merchandise” (CCC 2008:47f; EvB 2008:18; Hearson 2009:24:5). This situation is seen as particularly bad in the case of large discounters like *Aldi* or *Lidl*. The actors are powerful due to their order volume and are under a lot of pressure to cut costs because of low profit margins, due to their low prices (CCC 2008:48ff). However, the critique is not only directed to discounters, but also to other lead firms:

*Another fundamental purchasing practice issue that is seldom discussed in CSR reports is the matter of prices paid to suppliers and how they impact on the wages paid by suppliers to workers. (CCC 2009b:14)*

*Alle Einkäufer drücken die Preise massiv. Hierzu nutzen sie ihre Macht als Besteller großer Mengen. Akzeptieren die Lieferanten die Abnahmepreise der Multinationalen nicht, bleiben sie auf der Ware sitzen: Das Risiko liegt voll beim Lieferanten. (KsK 2008b; KsK 2009c:2)*

*Allein der Übergang vom Quota Ausstieg hat die Preise um 40% gedrückt. Und die Einkäufer machen enorme Gewinne. ... Enorme Gewinne! Ich glaube, Otto hat vor 2 Jahren sein bestes Unternehmensergebnis eingefahren in seiner Geschichte. Wo kommt denn das her, wo überall die Preise runtergehen? (A4)*

The pressure and exploitation by lead firms is being connected with global **competition**: buyers always find a supplier who is willing to accept an order that has conditions he cannot accommodate without exploiting the workers. Accordingly, suppliers express their fear that buyers will place their next order in a different factory if they turn down an order that goes beyond the capacity of their factory: “We really can’t negotiate because we’re afraid they’ll award the contract to another supplier or to another country” (CCC 2008:46). In this power situation buyers are criticized as follows: They “force concessions” onto the suppliers or influence the terms of trade to their own advantage (CCC 2008:47f). Some buyers, for instance, pay with a ‘letter of credit’ by which the buyer can still reject the merchandise on its arrival in Germany for a variety of reasons, while “the supplier has the full risk” (CCC 2008:47f). Particularly larger buyers are criticized for conducting so-called *online inverse auctions*, where the buyer pre-selects some suppliers, who directly have to bid for an order against their competitors. This is criticized for driving down prices a lot (Hearson 2009:47) (N25). The quote from a CCC

publication hints to some of these problems:

*KarstadtQuelle hatte im Herbst 2006 seine gesamte Beschaffung an das Hongkonger Unternehmen Li&Fung ausgelagert, wodurch u.a. die Einkaufspreise um 5-10% fallen sollten. Bereits im Mai 2005 hatte KQ im Zuge eines Sanierungsplans Rabatte von seinen Lieferanten verlangt. Bis heute bleibt Arcandor / KQ den Nachweis schuldig, wie seine Einkaufspraxis mit sozialverträglicher Beschaffung verbunden ist. ... adidas denkt zur Zeit laut darüber nach, seine Produktion aus China nach Vietnam oder Kambotscha zu verlegen. Der Grund: in China wird ihm die Produktion zu teuer. Es entwickelt sich eine globale Konkurrenzbeziehung der Lohnabhängigen, die sich immer weiter verschärft. (KSK 3&4-2008:6f)*

The CCC calls upon buyers to set retail prices in “a responsible manner” that allows suppliers to implement the Codes. Lead agents shall “refrain from advertising that creates consumer expectations of unsustainably low prices” (Hearson 2009:24:9; KsK 2009a:3).

### **Lead times**

Suppliers complain that the lead times are continuously getting shorter, e.g., that they have come down from 130 or 90 to 60 or 45 days within ten years. If they do not supply in time, they have to pay a fine according to the contract with the buyer (A2, A5, S1, S2, S3, S4, S6, S9). Short lead times are seen as problematic, because they make factory managers set production targets in an ‘unrealistic’ way, i.e., in a way that cannot be done within the normal working hours. Supervisors then are afraid that they do not manage their targets anymore and start shouting at workers, because they come under pressure and are more interested in getting the production done than in keeping compliance up, as an auditor illustrates (N7):

*The guy who does the compliance enforcement in the company is different from the guy who does the production. This guy is concerned, he wants the order done. He is not really bothered whether he is working overtime or breaking the laws. (A3)*

NGOs and suppliers mainly claim that lead agents cause short lead times (e.g. by lacking coordination or short notice orders). For instance, suppliers complain that they cannot start producing because the buyer delays the order (S4, S5, S7). An auditor says that suppliers are afraid to protest, fearing to lose a customer, if they do (A3). The three quotes illustrate this:

*And pardon me for saying it, but at times the quality control people from the buyers, they come late. They come at six o'clock in the evening or at 5.30. But that time they have changed the material. By that time it is loaded. Obviously it will go beyond the working hours. But we as the manufacturers are not supposed to raise fingers towards the buyers. (S4)*

*Let's say the brand is sitting in NY city. We have various sourcing divisions, and we have a compliance division. ... Sourcing says, I want this delivery in 45 days. But they delay the approval by 15 days. They don't give me an extension of 15 days, so I am down to 30 days. What do I do? And compliance says, you can't work more than 12 hours OT a week. It's a self-conflicting situation created in NY city. (A2)*

*They (Walmart) are the worst. They keep on giving changes until the last minute. After that we will be finding it so difficult to finish production before the shipment date. But they will never accept that it is their fault. They will find some excuses to show that we are at fault. What can we do then? They are big buyers, right? We will only have to adjust. Then they will start asking us to send it at a discounted price and so on. They are the ones who delayed the approval. (Hearson 2009:48 quoting Indian Manufacturer)*

The CCC does not blame companies in general. It differentiates between some companies that put stress on producers to an extreme form, whereas it emphasises that others, like Tesco, cancel orders if pre-production samples are not accepted within 30 days in order to prevent excessive pressure on the suppliers (Hearson 2009:49). The quick changes of fashion styles also cause stress in a factory and are attributed to particular buyers (KsK

2008b).

Finally, some NGOs also say that problems inside the factory (e.g. bad management and low efficiency) can also cause stress situations that are connected with labour abuses (N4a, A2) (Hearson 2009:48). However, the CCC argues that most ‘giant’ retailers bias their supply chains towards suppliers “whose owners are more desperate and less scrupulous than might otherwise be the case” (Hearson 2009:7). The fault, in the end, is with the buyers.

### **Flexibility**

NGOs, auditors and suppliers criticize that lead agents do not commit themselves to reliable, long-term relationships with their suppliers, but that they ‘jump’ between suppliers and markets, as soon as they find a supplier who produces for a cheaper price. The CCC claims that this problem is aggravated by global competition and the liberalisation of the garment trade by the MFA, as buyers can more freely choose where to produce (Wick 2008). One consultant illustrates this permanent need for flexibility:

*Und was macht der Handel, wenn er dort nicht mehr produzieren will? Der hat keine Schwierigkeit von heute auf morgen zu sagen: Wir schließen. ... Also dieser Markt, der ändert sich alle 8 bis 15 Jahre wandert er. In dem Moment, wenn einer zu teuer wird, dann geht er weiter. D.h. er verpflichtet sich ja nicht lange irgendwo zu bleiben und da Entwicklung zu machen. Aber dann wenigstens während er Geschäfte macht, soll er die so machen, dass er nicht nur Müll hinterlässt. (A4)*

The trend towards an increasing number of seasons and a frequent change of fashion styles is argued to worsen the situation. The CCC criticizes this as “fast fashion”, according to which retailers respond to customers in real time by means of lean production, placing smaller, more frequent orders with a short turnaround time but with even less long-term perspective for the suppliers (Hearson 2006:15f; CCC 2008:49). The problem NGOs see in this flexibility is that suppliers do not have any long-term perspective, which makes it more difficult to plan. They cannot provide any long-term security to their employees and they are not able to build up a cooperative, trust-based relationship with their buyers in which they both invest into compliance issues, as one quote illustrates:

*Some “achieve the terms they want by constantly jumping between suppliers, pitting them in competition with each other and moving on as soon as they find a supplier willing to go cheaper or faster” (Hearson 2006:17).*

In addition, the CCC criticizes brands and retailers for terminating their relationship with suppliers without caring what happens to the workers. The CCC and other NGOs demand that even if the working conditions in a factory are bad or if breaches against the labour codes are detected, a brand or retailer shall not terminate the relationship with his supplier. Instead, buyers shall take the responsibility and cooperate with the supplier to improve the situation of the workers in that factory, and build up stable, long-term relationships with their suppliers. This would make it more likely that factory owners and managers address workplace issues requiring capital investment and time to improve (Merk 2008:8) (CCC Spring 2009:14). If workers are dismissed, one common claim is that the buyer shall take care that workers are re-employed (KsK 2009a:2), as the quote illustrates:

*Erst beutet man die ArbeiterInnen jahrelang gnadenlos aus – und wenn es jemand mitbekommt, flieht Metro aus der Fabrik. ... (Die CCC fordert Metro auf) wieder in RL DEMIN produzieren zu lassen, dies aber endlich unter menschenwürdigen Bedingungen. (KsK 2009b)*

However, other interviewees deny that buyers change frequently, saying that most brands try to grow with their suppliers and build up a trust relationship (A5). A quote of a supplier, who consciously decided to deliver to only one buyer, illustrates this, even if this is an extreme form of relationship:

*I consciously decided to put my eggs into one basket. It was a very strategic move. Instead of being a small supplier to multiple customers; or, for a given customer, being one of the many suppliers. I thought that it was a better alliance by which I mean something to one customer, and that customer means something to me. It is like a marriage. You know, you are married to one wife, and it is a good relationship, it goes on and on. The moment you start flirting with too many people, you run risks there. And the chances are of all the associations, including the marriage fails. (S1)*

### Power and responsibility: Social standards

BSCI and FWF members and many other companies (but not *Lidl* anymore) similarly claim that they take responsibility for improving working conditions in their supply chains, e.g., by setting and auditing social standards. The arbitrarily selected statements of BSCI and FWF members demonstrate this (→ Table 17).

Many interviewees say that they demand a social audit from a new supplier, even before an order is placed to “guarantee that everything they import is done according to their standards” (B2, B3, B4, B6, B9, B12). However, most BSCI and FWF member companies implement social standards in line with the ‘developmental approach’ (→ CH 7). Companies do not always communicate this, but FWF and BSCI both argue that there are still many standards violations on the supplier level. As not all companies communicate this clearly, such statements might be seen as deceiving consumers, as the *Verbraucherzentrale Hamburg e.V.* claimed against *Lidl* (→ CH 6, Box Box 3).

**Table 17: Statements regarding the social responsibility for workers in the supply chain**

BSCI member	FWF member
We have also become a member of the Business Social Compliance Initiative (BSCI) established by the Foreign Trade Association (FTA) this year, and have communicated to vendors the significance of BSCI certifications as the appropriate accreditation to signify their compliance with human rights and minimum social standards.	While we work closely with international organizations that implement and monitor working conditions throughout the world, we have always acted on our own social principles. Treating people the way we wish to be treated doesn't just apply to those we see every day. (Hess Natur)
As a company operating on a global scale, OTTO feels responsible for establishing socially acceptable manufacturing processes. Our 'Code of Conduct' sets out the working conditions that must be complied with at the companies that manufacture products for OTTO.	Every Switcher supplier submits to a pre-audit of his environmental and human relations policies. Each supplier is closely scrutinized on these criteria from the Switcher code of conduct. Switcher works regularly with its suppliers to help them improve their rating on the whale scale.
Als Mitglied der freiwilligen internationalen <a href="#">Business Social Compliance Initiative (BSCI)</a> unterstützen ALDI SÜSSE und die anderen europäischen Ländergesellschaften der Unternehmensgruppe ALDI SÜD gemeinsam mit ihren Lieferanten die Durchsetzung und unabhängige Kontrolle eines international anerkannten, einheitlichen Sozialstandards.	The Mammut Sports Group AG has set itself the goal of focusing its long-term business activity on the principles of sustainability. At a social level, for us this means acting responsibly towards all employees, as well as all persons involved in the value chain. To ensure fair and humane working conditions for all.

Sources (20.1.2010):

[http://www.Aldi-suisse.ch/ch/html/company/Verantwortlich\\_Handeln\\_DEU\\_HTML.htm](http://www.Aldi-suisse.ch/ch/html/company/Verantwortlich_Handeln_DEU_HTML.htm)

<http://www.otto.com/Code-of-Conduct.303.0.html?&L=1>

[http://www.esprit.com/index.php?navi\\_id=52](http://www.esprit.com/index.php?navi_id=52)

<http://www.hessnatur.info/us/what-we-do/social-responsibility/social-standards.html>

<http://www.switcher.ch/english/about-switcher/sustainable-development/social-audits-and-the-classification-of-our-suppliers.php>

[http://www.mammut.ch/en/csr\\_sustainable\\_social.html;jsessionid=84878C0EB5E87857448A8A795D22C273](http://www.mammut.ch/en/csr_sustainable_social.html;jsessionid=84878C0EB5E87857448A8A795D22C273)

**Buyers' demands conflict: Suppliers cannot integrate social standards**

The CCC claims that the demands lead agents have in the purchasing policies – i.e. low prices, short lead times, social standards – are conflicting and ‘incompatible’. They are seen to “undermine the suppliers’ capacity to comply with labour standards” or even structurally impose a situation that the suppliers cannot accommodate (Pruett 2005:78f; Merk 2008; Hearson 2009:52)<sup>113</sup>. Vice versa, suppliers cannot and do not implement social standards, if buyers do not provide them with long-term security in sourcing, if they pay low prices, and if they require the goods to be delivered too quickly – lead agents are simply framed to cause bad working conditions, while workers are the victims:

*The company should address the conflicting logic of simultaneously pursuing lower prices and shorter delivery times whilst simultaneously pursuing its compliance with labour standards. Current purchasing practices tend to undermine the capacity of the supplier to comply with labour standards. For example, demanding short lead times may result in excessive or forced overtime. Or, when the company constantly shifts its orders, suppliers may end up feeling that there is no incentive for making the required improvements. (Merk 2008)*

*Ein wesentlicher Grund für diese schlechten Arbeitsbedingungen ist bei den Einkaufspraktiken der Discounter zu suchen. Aufgrund ihres riesigen Auftragsvolumens haben sie eine enorme Macht über die Lieferanten, können die Preise drücken und Lieferfristen kürzen. Das Motto lautet: Billiger, schneller, flexibler, das Risiko sollen die Lieferanten tragen. Die Produzenten in Bangladesh und anderswo setehen diesen riesigen Konzernen machtlos gegenüber. Sie geben den Druck weiter an die Näherinnen, auf deren Rücken letztendlich der Kampf und die niedrigen Preise ausgetragen wird. (KsK 2008a:6)*

Some suppliers furthermore criticize that buyers use audit reports to pressure them and tell them what to do (A3, S2). In the eyes of some suppliers, buyers put enough pressure on them in terms of quality, lead time, and price; social compliance is then seen as a disturbing cost factor, but they find ways to deal with it (S2, S5, S8). The CCC and other NGOs claim that in a situation of structural power in global supply chains, suppliers mainly react with one of the following strategies or a combination (Hearson 2006:15f):

- They **pass the pressure to the workers**, exploit them, pay low wages, force them to work overtime and provide insecure contracts, as NGOs regularly report – i.e., they do not implement the social standards.
- They **cheat in audits** (→ compare chapter 9.2.3).
- They **subcontract** to factories in which social standards are often bad, without being transparent about this (CCC 2008:49). Local NGOs claim that many of the firms subcontract more than they admit (N9a,b). Most interviewees regard subcontracting as problematic because social standards in the often rather small, subcontracted factories are very low (A2, A6). As the quote of one auditor pinpoints: “*That factory has to be audited for compliance. It'll never pass. These small types subcontractors, forget it. It's like banging the head on the wall*” (A2). Many subcontractors are said to be working informally, often children work. Business-wise subcontracting can also be problematic, as it can lead to delays in inputs (A6). One main problem about subcontracting, as one auditor says, is that it is hardly possible to identify when orders are subcontracted without authorization, even if it happens all the time: “you can't always find it out, but occasionally we do” (A2).

<sup>113</sup> <http://www.labourbehindthelabel.org/background/responses/101-purchasing-practices>, 10.10.2009



**CCC demand: Change purchasing practices**

The CCC demands that brands and retailers address the impacts their purchasing practices have on the implementation of ethical standards and report about the results of assessment and remediation in the supply chain (Hearson 2009:24:8) (Wick 2009:48):

*As an integral part of internal monitoring and external verification, companies should determine the negative impacts of their purchasing practices on working conditions, and take steps to alleviate these negative impacts. This could include measures such as establishing stable, lasting relations with suppliers, a preference of unionized factories and by setting clear values for living wages by country, and showing that these have been factored into pricing agreements. (Merk 2008)*

The CCC claims that even if smaller companies might have less power, they can also change their purchasing practices and are thus responsible for working conditions (N22). The FWF, for instance, mainly has small and medium companies as members, whereas many large and powerful companies join the BSCI. Being a campaigning and not a consulting organization, the CCC does not go into great detail how they should be changed, but refers to membership in the FWF, which it co-founded for such reasons.

Various BSCI members and other companies in their own defence claim that they already consider the issues that the CCC demands in their purchasing policies, e.g., by building up long-term relationships with suppliers or by discussing factory capacities (B1, B4, B6, B27). These practise are said to have positive effects on quality, reliability and social performance.

However, as there is no transparency about what companies do, they can assert what they want. For instance, one buyer (B6) confirms that the buyers' purchasing policies – low prices and lead times – contribute to a large part of the problem and says that he must discuss capacities with the suppliers according to which they can orient themselves in the mid-term. In his strategy long-term relationships shall raise the quality and the social and environmental standards in order to better compete with other suppliers. In a longer cooperation the one-time investment into a supplier, whose social standards were developed, might even pay off due to efficiency or lowering acquisition costs. But the same interviewee says that his company has major difficulties if it has to pay ten cents more for a T-Shirt just because the supplier is a better performer in terms of CSR. In this case, the space for manoeuvring is relatively small. The quote illustrates his view:

*Mit unserer Einkaufspolitik leisten wir einen maßgeblichen Beitrag auch dazu, dass es zu diesen Problemen kommt. Das heißt, wir müssen uns dann auch gefallen lassen, darüber zu diskutieren, wie sieht das mit unserem Pricing-Verfahren aus: Können Lieferanten überhaupt zu den Preisen, die wir machen, die Qualität produzieren, die wir verlangen? Also auch die soziale Qualität. ... das setzt wiederum voraus, dass man sich die Kalkulation auch mal aufdeckt. Das geht nur, wenn man als gleiche Partner an diesem dialogischen Prozessen sitzt und nicht als Mediator steht, und dann den großen Dirigenten macht und sagt: Einigt euch mal schön, dass Ihr die sozialen Parameter einhaltet - und wir geben euch dann auch nochmal ein paar Tipps, wie man den Feuerlöscher richtig hängt. (B6)*

**10.1.2 Challenges regarding buyer power and responsibility in purchasing practices**

Companies frame their arguments in terms of structural constraints and costs. They claim that their power to implement social standards into their supply chains is limited in four ways:

- The **fashion market** is highly competitive, and it demands flexibility, short lead times, and high quality.

- The **price competition on the consumer markets** for a particular product limits how much lead firms can increase the FoB<sup>114</sup> prices in order to compensate or support the suppliers for implementing standards.
- The **complexity of supply chains** and their lack of transparency connect the implementation of social standards with high transaction costs, which can be lowered by reducing the complexity of the chain.
- The **factory management skills** limit the possibility to integrate standards – i.e. the knowledge on the supply level of how to manage a factory is missing, which can be compensated by qualifying suppliers. (→ This argument is presented in chapter 10.2)

### Challenge I: Fashion market, global competition and flexibility

Although most lead firms argue that quality, price and social standards are equally important, lead firms usually focus most on quality and on prices. Lead firms focus a large part of their attention in their supply chain relationships on product quality, e.g. product measurements, shrinking of textiles after washing, colour fading etc. and therefore the confection part is most relevant (B2, B3, B5, B23). Mistakes that happen here can make a product unsellable, which leads to losses for the buyer, and the supplier. Therefore, buyers and their suppliers take a lot of efforts to assure that the products meet the buyers' quality requirements, and many lead agents take a lot of effort to test the quality of their products (→ compare Box 13). NGOs sometimes criticize that brands and retailers test the quality of their products more rigorously than they test the quality of social standards (N2).

#### Box 13: How lead firms test product quality

Buyers use the following methods to ensure product quality:

In their **contracts with suppliers** buyers specify the quality of the fabrics, which includes fabric quality, measurements of the garment, and they often also set a fee that the supplier has to pay in case the quality is too low. Basically, the quality standards are codified exactly and whoever is holding the final product in his hand can easily measure whether it fulfils the quality requirements.

Some lead agents say that they focus on **selected suppliers** that have been delivering good quality over a long time, and that they try to develop them. Some strategically try to turn some of their suppliers into mid-term 'partners' with loosely defined mutual commitment (B6, B16). This concentration allows buyers to focus their investment on important suppliers and to save costs e.g. for looking for new suppliers or the need to develop the buyers' quality. Various buyers emphasise that they have been interacting with some of their suppliers for a very long time, and say that this has paid off. However, one buyer says that it is not always easy to keep a supplier and that they have to offer them incentives, e.g. by reducing the samples from 5% to 1% - but he does not mention to raise the prices paid as incentive (B4).

Further, larger buyers say that they do an initial **quality audit** in each factory that they need to generally check before they place an order whether the factory can produce according to their demands (B3). After an initial quality audit, the buying staff, buying agents, or other quality controllers usually conduct a quality control of samples of the products during production (i.e. inline quality control), and often before packing, and quality is controlled at arrival. If bad quality is discovered during the production it can be changed. However, if a buyer discovers at a final check in Europe that the quality of a whole order is not according to the contractually fixed requirements, he will not accept the delivery (B1, B3). This evidently has serious consequences for the supplier, but also for the buyer, who is missing parts of a collection. Accordingly most buyers and suppliers spend a lot of efforts to assure that the quality is met.

Lead firms also say that they buy **input material** and provide it to the suppliers in order to ensure a certain product quality (B1), whereas some do not care where the supplier gets his inputs from, if it fulfils the agreed quality (B3). However, some suppliers have criticized this practice making them less flexible.

Buyers show different opinions and experiences regarding the flexibility in sourcing and their relationships with the suppliers. Some say that "it doesn't make sense to change permanently" (B2), and others claim that they consciously keep a constant supply base

<sup>114</sup> FOB=freight on board

and try not to change suppliers often, but only if they have to. Others say that “it is not possible” to survive without frequently changing the suppliers that will always be there (B6, B7), the fluctuation can be up to 35% of the annual order volume (B5, B6, B7). Buyers name three reasons why they cannot rely solely on long-term relationships:

- Need to adapt to the changing fashion market, increased by liberalization of the MFA.
- Flexibility reduces risks.
- Flexibility allows buyers to exert power over suppliers.

First, the most important reason given for the need of flexibility is **fashion** and the quickly changing fashion market and demand for styles. This is said to require a broad spectrum of suppliers, who are able to produce different goods. If suppliers are not able to produce according to the demands anymore, maybe because the new season demands a different style, suppliers must be changed (B4, B5, B6). Changing factories is easier than factories changing their products. Thus, fashion is seen as a structural issue that a single company cannot change:

*Man braucht ein breites Spektrum an Lieferanten um möglichst schnell unterschiedlichste Produkte liefern zu können. Werden in einem Jahr Pailletten nachgefragt kann man von einem Basic-Lieferanten nicht erwarten seine Produktion umzustellen. (B7)*

*Es gibt immer wieder Modetrends, denen man Folge leisten muss, das ist ein ganz großes Thema, wo einfach auch ganz klar ist, ein Jahr ist Pailletten ,in', das braucht man, und das hält dann vielleicht noch ein 2. Jahr, aber im 3. Jahr möchte das keiner mehr sehen, da spezialisiert man sich natürlich schon sehr, gerade bei Modetrends, das ist ein Grund. Das ist relativ schwierig, diese Fabriken umzustellen. (B4)*

Having said this, which products a company produces and how much it follows a certain trend is strongly determined by the corporate philosophy. Some companies purposely decided to only offer simple basic products, like T-Shirts, which make it more possible to build up an ecological and fair supply chain. With basic products this is easier, because the fashion trends do not change quickly (B1, B26) and there is no need to quickly change a supplier for fashion reasons.

Second, buyers use flexibility and diversification in sourcing to **fight off risks** coming from the supplier or from external sources. A typical quote used by almost every single corporate interviewee is: “You don’t put all eggs into one basket”. A buyer never knows whether this supplier keeps up to his promises he makes in a contract, or whether the market might not offer a better alternative. This prevents buyers from setting up contracts that last longer than one order. Many buyers explain that they ‘test’ suppliers – i.e. place an order and see whether they are satisfied with what this supplier delivers. If the supplier does not satisfy them, they need to be able to dismiss the supplier after two or three years (B5). However, as long as a supplier is tested, a buyer will not invest in him. Additionally, things can go wrong with a delivery, and then the supplier needs to be changed (B3). For instance, despite the attractiveness of Bangladesh as innovative and high performance knit-market, sourcing from it was a big problem in 2007 due to the insecure political situation (B6). Such risks explain why buyers do not source only from one country, even if conditions seem very attractive (B3, B5, B12).

Third, one lead firm says that the flexibility in sourcing allows to exert more **pressure**

**on suppliers**, as the supplier is aware that each order might be his last one if he does things wrong (B5). But the power relations are not always so clear-cut as suppliers also cut relationships with their buyers, for instance, if the lead firm is too small to be very relevant (A2, B4, B23).

### Challenge II: Maximum prices

Interviewees from lead firms limit their responsibility by saying that they are not very flexible on prices (B3, B6, B8).<sup>115</sup> Some interviewees claim to be in a ‘high priced’ market, whereas others are in a ‘low priced’ market. One company that is selling eco-quality garments for a higher price explains that it is more flexible in the prices it can pay because their corporate philosophy does not emphasize low prices, but quality, ecology and fashion (B1). In contrast, the corporate philosophy of discounters like *Aldi* and *Lidl* that are strongly criticized by the CCC (→ CH 10.1) has a much stronger emphasis on prices and has much less space to manoeuvre.

The difference between lead agents that are oriented towards ‘high prices’ and those oriented towards ‘low prices’ can be illustrated with the example of a plain white T-Shirt, which when bought from India or Bangladesh in large amounts costs between approximately 1 and 5\$ FOB<sup>116</sup>, depending very much on the amount and quality. Some interviewees considering themselves not as low priced explain that they would not change the supplier if he raised the price of a T-shirt by 4 cents (B4, B16), 10 cents (B1) or even more (B22). One company that is selling T-shirts below 5 Euro argues that the prices do not play the top priority in sourcing. However, he says that it will become very difficult to stick with a supplier, if he raises the price of a T-shirt price by 9 cents (B6), even if he is a better performer in CSR than the cheaper supplier.

*Nächster Fall: Der Best-Performer im CR-Bereich ist aber von den drei besten der Schlecht-Performer im Preis (lacht). ... und dann muss man gucken, so nach dem Motto, wie ist im pricing ... jetzt der Unterschied. Sind das 0,02 € pro Artikel? Sind das 0,03 €? 0,10 €, 0,20 €? Ja? wie ändert sich eine Kalkulation, wenn ich das quasi bis zum Verkaufspreis durchkalkuliere. Nicht? Da wird es ja spannend. ... wenn dieser Best-Performer CR, sag mal, 8 oder 9 Cents im Einkauf pro Stück teurer ist, dann haben Sie schon ein Problem. Ein echtes Problem. (B6)*

These examples suggest that a company that is selling a T-Shirt to a low-price buyer (e.g. below 5 Euro) might have a different understanding of price flexibility in their purchasing practices than a company selling a T-Shirt for a higher price, e.g. 30 Euros<sup>117</sup>; but the interviews also show that it cannot be generalized and that it also very much depends on factors such as economies of scale, or the channels lead firms use to distribute the products.

One interviewee from a company criticizes that NGOs use too simple models to calculate the labour costs in a product (compare CH 2, Figure 11 & CH 9.1.1). He regards the claim that the relatively low wages in garmenting could easily be raised or even doubled if the end price is increased only slightly as not realistic. The buyer argues that there are several points in the chain where the price increases. The increase in buying

<sup>115</sup> These figures are hardly possible to get through interviews.

<sup>116</sup> FOB: Freight on board – shipping and taxes is extra.

<sup>117</sup> One company explains that he needn’t compete on the “Wühltischliga”, because they do not sell a T-Shirt for 5 Euro, but for 15 Euro; and this is not more expensive from a more comprehensive perspective, because the more expensive T-Shirt compensates the higher price through its higher quality and longer life (B1:9).

prices might end up much higher than proposed by the CCC, and you “die in beauty”, when no one buys your product anymore (B1, B22). However, both buyers that are portrayed as critical, finally opted for a positive approach towards fair trade and organic cotton, saying that “you will somehow get it done”, if you approach the topic (B1, B22).

While NGOs demand from lead firms that they pay high prices to enable the suppliers to pay living wages, buyers doubt that workers benefit from increased FOB prices, saying they do not trust that managers forward the prices. For instance, one interviewee argues that it is naïve to believe that the workers get the 10 Cents if he paid each supplier 10 Cents more for a T-Shirt. Rather, the managers would take the profits: “I’ve seen it in China: the workers work hard, but the managers drive a 7er BMW” (B1). Due to such problems, the FWF argues that individual solutions have to be found for every supply chain situation in order to pay living wages, which might also be transferring additional money for each product directly to the workers, instead of paying the factory a higher price for the shirts (N26). Others suggest calculating the exact time it takes to produce a T-shirt, which would enable to calculate the exact wages and pay accordingly. This, however, requires some transparency.

### **Challenge III: Supply chain complexity, power & transaction costs**

Various companies argue that the power they hold over suppliers is limited and refer to the complexity of supply chains, indirect sourcing and subcontracting. Some brands propose to build up more partnership-like supply chains that include more trust.

#### ***Buyers power, direct and indirect sourcing***

Corporations refer to differences in power between direct and indirect sourcing. Companies argue that in **direct sourcing** they are better able to influence the supplier regarding social, environmental and quality standards. He has direct contact to the producer, direct access to the factory in which the goods are produced, and larger companies might also have a local office to support them (B2, B3, B6, B7). Particularly companies with local offices argue that they visit the factories very often, have a better trust relationship, and know exactly what happens inside with regard to workers (B3). The buyer also has a responsibility that the quality of the product is good and that the goods are delivered in time (B8), he therefore has to establish quality control systems and sanctions for delays.

In **indirect sourcing** the lead firm has a contact to an import agency in Europe or to an export agency in the production country, but no direct access to the factory and therefore holds no direct power against the producer. In such cases the lead agent focuses even more on design and marketing and less on supply chain management. In indirect sourcing the agent, who has an office in the production country and usually also the market country, does all the work that needs to be done, like the direct interaction with the producer including quality control, logistics, taxes up to the shipping of the products, control of social standards – but its costs are therefore integrated (B2, B5, B6, B7). Some lead firms say that they are interested in the transparency of the production steps in the chain but do not want to interfere in the contracts the agency has with their producers (B7). Others argue that they know where their German importers source the products from, but that it is totally irrelevant because they are only interested in the product itself

(B5). Others again say that they are lacking transparency about their own supply chains, but hope that ‘Radio focus identification technology’ might in the future fill this gap (B3).

Indirect sourcing thus makes it difficult for the lead firm to take responsibility for working conditions in the chains and to develop the producer, because there is no business relationship. At the same time buyers that are sourcing indirectly seem to be less interested in issues of responsibility. Some complain that agents are usually little interested in integrating social standards (B6)<sup>118</sup>. Due to problems regarding transparency in indirect sourcing, the BSCI adapted its rules and opened the membership for importers, shipping agents and exporters in 2008. For instance, the German discounters and BSCI members *Aldi* and *Lidl* work a lot through importers. According to the BSCI rules, the importers must also be member and then integrate his suppliers. Even one BSCI member criticizes that *Aldi* and *Lidl* now do not take responsibility anymore:

*Importeure und die Reedereien, vor allem in Deutschland ... kamen dazu, weil Lidl und Aldi gesagt haben, wenn ihr uns liefern wollt, dann müsst ihr BSCI Mitglied werden. ... Lidl und Aldi müssen nichts machen, dann machen es ihre Lieferanten. Also sie haben eigentlich die Verantwortung jetzt an diese Lieferanten weitergegeben. ... das System erlaubt das, ermöglicht das, ob das jetzt gut ist oder nicht, das sehen wir dann in den nächsten zwei, drei Jahren. ... Wir könnten das ja eigentlich auch machen, ich habe mir das einmal überlegt, weil es uns das Leben auch einfacher macht. Aber man will ja wissen, was passiert auf diesen Wertschöpfungsketten. (B23)*

### Subcontracting

Most lead firms expect that their suppliers tell them when they subcontract production as they fix in the contracts that this information must be disclosed, and they must assure that their suppliers stick to the same standards (B2, B3), or forbid subcontracting (B6). However, most buyers see subcontracting as a problem, and admit that it is difficult to identify whether a supplier subcontracts production (A2, B2, B3, B4, B5, B16). One interviewee explains that they have stopped sourcing from Tirupur due to the enormous subcontracting problems in all the small companies there, and instead they have moved to Bangladesh, where factories of 500 or 1.500 people do not subcontract, as the quote illustrates:

*Dieses 'contracted working', dass wir in Indien gesehen haben, da schüttelt es einen, weil, sie nie den Verantwortlichen haben. Sie haben immer nur Leute, die sagen, nö, das macht jemand anders, habe ich gar nichts mit zu tun, ich kenne die wohl, aber was die da machen .. ich weiß nur wer die .. - der bekommt dann den Auftrag, dieser Achmet, besorge mal für morgen 30 Näher, und wo der die dann her kriegt ist dann seine Sache. Wie er sie bezahlt und wie lange die arbeiten, interessiert ihn überhaupt nicht. Das geht in China nicht. (B5)*

Various reasons are suggested why subcontracting can be found: Lack of management skills, company or industry structure, or the local institutional context:

- Suppliers might take more orders than the capacity of their factory allows, which either leads to subcontracting or working overtime, and which is seen as **bad management practices** (A2). Suppliers, in contrast, argue that they are afraid to deter buyers if they do not accept the orders, which rather links to **power**. An auditor argues that the suppliers' fear that they might loose business because they subcontract: “Am I going to loose trade? That is the first question that they ask,

<sup>118</sup> This little interest in CSR by the import agents is confirmed by the research: Whereas most of the brands addressed for an interview agreed to do an interview, the big players sourcing through an audit – *Aldi* and *Lidl* as well as their importers who were addressed – did not agree to an interview.

because that is what they fear. They think that everyone wants in-house production” (A6). The interviewee suggests that a better trust-relationship between the buyer and the supplier is necessary.

- A factory might not be able to conduct all processes under its own roof, due to **company size** or **industry structure**, which might make outsourcing necessary (A5, B4, B5). As factories are rather smaller in some regions than in others, one auditor suggests that the factory size might be connected to local laws (A6). One interviewee from a Top-10 German company claims that a factory in China with 50.000 workers does not do subcontracting, but the buyer explains that he is not able to place his orders in such a factory, because it prefers large buyers from the US that place much larger orders (B5). In contrast, in Tirupur, factories with more than 100 workers must have a medical room etc., which might lead owners to decide to stay small (A6).
- Production might also be subcontracted for **‘cultural’ reasons**: an auditor explains that in some regions women are not allowed by their husbands to go out of the house, and so they have to work at home – “it’s cultural reasons” (A6).

### **Reducing complexity of supply chain**

As most refer to supply chain complexity as a problem to implementing standards, the main question most have is: How to reduce complexity? Many strategies thus aim at making things ‘doable’, particularly in terms of costs and efficiency, e.g., by prioritizing and consolidating:

*If you scatter it all over, it is very difficult to monitor. ... If you are doing big volumes in two or three factories, the productivity is bound to be better. So simply for better controls, most buyers are consolidating. ... Quality will improve, productivity will improve, controls will. (A2)*

*If you want to integrate the whole chain, you can take the producers times 15 or 20 – so you ask yourself: where to start and where to stop? That is why we need to prioritize. (B6)*

Many lead firms use the strategy to consolidate their supply chain by reducing the number of suppliers. They focus their efforts on some ‘strategic’ or ‘core’ suppliers or plan to do so (B2, B5, B6, B7, B9). A strategic supplier is often a larger supplier and forerunner in quality, who has been working extensively with the buyer, and who shall grow with the company. Some brands or retailers build up a long-term relationship with so-called ‘core’ or ‘strategic’ suppliers that entails a good trust relationship. One larger lead firm says that they are working with 20 suppliers out of 700 for more than 10 years (B5). This enables them to invest limited financial and time resources for CSR on fewer suppliers and can develop ecological and social criteria. This is argued to have positive effects on business performance factors. Companies see the benefits of strategic supplier relationships in increased trust relationships between the buyer and supplier, more control over the managing systems, lower costs e.g. for monitoring, prioritized treatment, e.g. by getting a high percentage of the capacity, a supplier will, however, only invest a lot in favour of one company, if he is also recognised in the orders over a longer period (B1, B9). Strategic suppliers must therefore somehow build up trust and better guarantee a certain amount of orders, whereas the buyer does not want to become too restricted by binding himself too long to a certain supplier (B6).

*The one factory I was talking about earlier they were growing with us from a very small. They have been working with us for 10 or 12 years now and daily would probably be more interested in putting*

*their time, money etc in for us. (B9)*

Having said this, there are huge differences regarding what percentage accounts to strategic suppliers. Even if a buyer tries to build up long-term relationships with some 'core' suppliers, most that are involved in fashion will still have fluctuating suppliers. And despite the advantages of better relationships in the chain, to remain flexible it might still be necessary to break up the relationship with a strategic supplier who has been supplying for 30 years, a company argues (B5). Having said this, some very small fashion brands with less than 5 Mio Euro turnover argue that they do not have a choice but that they work with a very few suppliers; this is seen as both, an advantage, but also a risk, if things go wrong (B25).

### 10.1.3 Summary and conclusions

In sum, on the one hand, lead agents' purchasing practices are criticized as structural constraints that prevent suppliers from implementing standards and put them into a situation of dependency. On the other hand, lead agents defend their practices with reference to the structural conditions into which they are embedded such as: the demands of the fashion market, costs and competition, and the producers' poor management skills. The following issues are mainly contested:

- NGOs claim that due to their **power**, lead firms share a large **responsibility** for improving the conditions in factories. Most lead firms agree that they share *some* responsibility, but also claim that they already do a lot. However, since the situation for each company and each order is different, there is no common understanding how this responsibility can be defined with regards to purchasing practices. The BSCI does not touch this issue but recommends trainings for buyers, whereas the FWF deals individually with the issue through the management system audits and annual reports that are published by every company and for every supplier.
- One conflict deals with the **structural conditions** in which each actor is situated. According to the NGO/producer perspective, suppliers are the victims of lead agents who exert power by demanding social standards, fast delivery and low prices, and by threatening to move to another producer if the demands are not fulfilled. According to the brand/retailer perspective they also are in a position that they cannot do much, as the fashion industry and the consumers demand a quick turnover of products (i.e. short delivery times) and the global competition demands looking for the best prices. The reference to the structural conditions suggests that the focus on transaction costs alone does not help understanding the struggles regarding purchasing policies, but that e.g. the concept of embeddedness of the GPN is needed in addition.
- Whereas NGOs claim that buyers pay too low **prices** for the goods and demand too short **lead times**, most companies either argue that they try to adapt their purchasing policies to the suppliers' needs or that the structural conditions do not allow them to pay higher prices or admit longer lead times. However, the insecurity of the market makes some suppliers accept low prices if these are connected with a high order volume, since it provides some short-term security. These conflicts call for more transparency to be able to evaluate whether prices are fair.



- There is a conflict between power and trust relationships in the supply chain. Mostly NGOs stress that lead agents have the **power** to implement standards and that they should use this power in a way to demand standards but also support the suppliers. Economic actors in the GPN rather stress that a **trust**-based relationship is needed in order to implement standards. But both initiatives, BSCI and FWF, argue that they follow a partnership-based approach to implementing standards, although the CCC criticizes the BSCI for not requiring the adaptation of purchasing practices, which is not seen as partnership-oriented.
- While structural conditions constrain each single economic actor in the global production network, lead firms refer to the **management skills of the suppliers** that constrain the possibility to implement standards. Lead agents and the producers further refer to transaction costs as constraining factor for implementing standards.

## 10.2 Qualification: Improving management skills

The BSCI, the FWF and many lead firms claim that the management skills of factory managers need to be improved to raise working conditions. The FWF demands from its members that they support the suppliers, build up an auditing system, change their own purchasing policies and report about this. The BSCI, in contrast, demands that members initiate audit processes and capacity building in the direct supply factories (→ CH 7). This is a quite strong difference regarding how the two initiatives frame ‘corporate responsibility’ (→ Table 18).

**Table 18: How BSCI and FWF frame the members’ responsibilities for improving working conditions (own design)**

	<b>BSCI</b>	<b>FWF</b>
<b>What is the main problem behind working conditions?</b>	Mismanagement in the factories	Purchasing practices of buyers & mismanagement in factories
<b>Who is mainly responsible for improving the situation?</b>	Producers and stakeholders in the production country	The stakeholders in the production countries and the buyers share a responsibility
<b>How far does the responsibility of the brands/retailers go?</b>	BSCI members have to integrate the suppliers into the audit system, i.e. to initiate the processes	FWF members have a responsibility to improve the suppliers and to change their own behaviour that the suppliers can improve

### Non-compliance caused by poor management skills

The framing of responsibility can be connected to what actors portray as the main problem of poor working conditions. The main reasoning behind the BSCI approach to responsibility is that the ‘relevant’ work-related problems in factories are mainly caused by **mismanagement** in the factories. This reasoning is connected to the belief that national governments take care of more ‘political’ problems (e.g. minimum wages and freedom of association), whereas the companies have to deal with the ‘managerial’ problems (e.g. health & safety) inside the factory. The solution to the ‘relevant’ problems offered by the BSCI is proper management and training of factory managers, whereas

politics shall deal with ‘political’ problems (→ CH 9.1.2). The CCC and FWF agree that management in the factories has to be improved. But in contrast, both argue that the structural conditions of global competition are such that producers de facto cannot behave responsibly. One central aspect of a solution is therefore presented to be a change in purchasing policies (→ CH 10.1). The remainder of the chapter presents the arguments related to training factory managers.

**Training managers** how to run a factory efficiently shall help to manage factories within the legal rules, and some argue that this might end up in higher profits on the supplier side, which they could transfer to the workers, a consultant argues (A8). Management training is regarded as necessary, as major problems in the management and organization are seen in the whole industry: “This whole business is substantially disorganised. You are not sure whether fabrics come in time or not come in time; and then whether your imported trims are going to get stuck at the customs or not” (S1).

What NGOs frame as power of the large lead firms, the BSCI and some other actors rather regard as the **normal competition** in a free trade market (A8). Producers argue that every factory manager has the responsibility to decide what he can produce within the ‘rules of the game’ and what becomes too much. If prices get too low or lead times too short to produce according to the laws, a responsible factory manager must turn down an order (A8, S6, S8, S9). If other producers are cheaper and thus more competitive, the market moves on:

*So why stop here, why not go somewhere else where it is cheaper? That is a fact of life, that is the way how international trade works, and must work. ... If there is a Vietnam or a Cambodia, or a Bangladesh, which can supply the equivalent quality of the product, satisfying the customers, giving at a good price, and work a lot of consistency over a bit of time, and the buyer shifts to that customer ... that is a fact of life. There is no other answer to this. The reason the buyers came to me in the first place, is that our wages are cheaper. (S5)*

For instance, one producer says that he simply cannot take orders from Zara, H&M or Esprit, because they demand a lead time of 55 days, which does not fit into his own stringent production planning (S2). Others argue that due to the demand and risks connected to them in the export of garments they prefer to supply the national market in India. Here the orders are lower in number, but the lead times longer and the quality control not that strict and he does not run the risk of cancellation (S1). A third producer argues: “Buyers from Europe, they are asking very low price. We are facing difficulty, we find it too tight. ... We don't take that risk. We don't go for this play of games. It will kill you” (S9). However, he says that some suppliers with low skills take such orders (S9).

Some interviewees argue that factory managers can best be convinced to comply with the laws in the business language, e.g., by pointing out win-win aspects of the implementation of rights e.g. referring to productivity, even if it is connected with costs (A6, A8, N7). However, NGOs agree that increasing productivity might help producers to implement standards, but warn that there is no automatic link between increased productivity in a factory and better working conditions. The quote illustrates how auditors try to convince managers to improve standards:

*A subcontractor, he was just into ironing of garments. I happen to visit him, and I said, there are no fans on your premise. It is too hot. It is inhuman. He said, you can check with the workers, and they like it that way. ... Then I sat with the supplier, and I spoke to him, and I said, have you ever heard*

*an incidence, were your product has been rejected? He said yes. Was it due to the reason of there were being a stain on your garment. He said, yes. How do you know? I said do you know from where the stain had come? He said, no, in fact, I had kept hunting for it, because I am so particular about the quality, and I couldn't identify. I said, it came from your pressing unit. Because they were sweating. ... So I said, now, to think they want fans for your workers are not. He said, yes of course I need fans. (A6)*

These arguments are very much ingrained in the free market model, which is regarded as beneficial, as one consultant argues: “we have globally developed quite well with the free trade model so far” (A8). In his argument he presupposes a functioning market economy in which basic conditions like laws are set, and thinks that Bangladesh is moving towards this situation:

*Wenn wir davon ausgehen, dass wir eine funktionierende freie Marktwirtschaft haben, die die Umsetzung bestimmter Basisanforderungen auch umsetzen ... ich im Rahmen dieser Marktwirtschaft immer das bestreben habe Produkte effizienter und günstiger zu produzieren und einzukaufen. Das ist letztlich das Modell, mit dem wir uns - denke ich - global uns doch recht gut entwickelt haben. Das ist der Bezugsrahmen, in dem wir uns bewegen. Und innerhalb dieses Rahmens muss ein Lieferant, wenn ich bestimmte Preise nicht machen kann, dann auch den Mumm haben auch zu sagen: Nein, das geht nicht. Und dann wird der Einkäufer auch sehr schnell feststellen, dass bestimmte Sachen nicht gehen. Das ist ein Prozess, der findet ja auch tatsächlich statt. Einkäufer kommen immer wieder in Märkte zu Produzenten mit Vorstellungen, die nicht realisierbar sind. Und sehr viele Unternehmer sagen dann auch, nein Leute, das geht nicht, tut mir Leid, versucht's woanders. Und dann stellen die Leute auch fest: das geht nicht. Es gibt dann natürlich auch immer wieder Unternehmer, die akzeptieren auch jeden Preis, um dann hinterher festzustellen, dass sie weder die Qualität liefern können, noch dass sie pünktlich liefern können oder dass sie auch irgendeine Mark dran verdient haben. Das ist auf der einen Seite dann natürlich bis zu einem gewissen Punkt die Verantwortung dessen, der den Preis akzeptiert hat. (A8)*

### Local embeddedness of low management skills

Some argue that low management skills are connected to the **embeddedness** of economic actors. Particularly in Bangladesh low management skills are connected to cultural and historical reasons. Garment and textiles is a starting point for many, who want to start a business. In Bangladesh many factory managers were farmers before they opened up a garment factory, and e.g., the largest supplier recruited 90% of its management from the military because they are known to lead many people, but not in a sense that is connected to working rights, a consultant says (A4). The garment industry is not capital intensive, the people have land to build a factory, but many have no skills to run it with a good human resources management (A4, A8). An Indian government representative similarly argues that their own garment industry is very bad in productivity, as compared to e.g. China (G1).

A consultant argues that managers in Bangladesh have only started to realize that they need to increase the efficiency of their production in order to survive the competition in the global market, and that factories in other countries are much more efficient, pay higher prices and are still competitive (A8). The complaints of suppliers in Bangladesh regarding low prices for their products are thus seen as a bad excuse that mainly refers to their lack of management skills or willingness to deal with the issues (A6). A consultant recommends brands and retailers to focus on issues relating to efficiency – as the government should focus on guaranteeing that the ‘rules of the game’ are fulfilled (A8).

*Das ist nach unserer Beobachtung ein typischer Markt, wo das Thema der Effizienz in der Produktion eigentlich erst am Anfang ist, dass die Leute jetzt langsam realisieren, dass sie auch ihren Betrieb entsprechend optimieren müssen, um dann im globalen Wettbewerb bestehen zu können. dass es eben nicht nur super-niedrige Löhne sind, die man braucht, um dauerhaft zu überleben. (A8)*

*Nach unserer Einschätzung ist der wesentliche Stellenmechanismus dafür zu sorgen, dass die*

*Rahmenbedingungen in den Ländern, was Sozial- und Umweltstandards angeht, dass die Einhaltung dieser Standards, das sollte möglichst garantiert sein. Da wird es immer Ausbrecher und Ungerechtigkeiten geben. Aber im Prinzip sollte dort schon eine möglichst einheitliche Basis sein, und der Rest ist dann normale Marktwirtschaft, wo der Markt, der in der Lage ist, sich effizienter zu organisieren, und der Betrieb, der in der Lage ist, seine Prozesse entsprechend zu organisieren, dann den entsprechenden Zuschlag bekommt.... es gibt dann natürlich immer noch finanzielle Notwendigkeiten. dass natürlich das Spannungsfeld ist, die Preise, die ich bekomme, und die Effizienz, die ich habe, da habe ich natürlich immer ein großes Spannungsfeld. (A8)*

### 10.3 Empowering workers

Most interviewees argue that workers need to be empowered to achieve their rights. Mainly NGOs and trade unions regard the right to *freedom of association* as the single most important standard to improve working conditions – “the ultimate way to achieve any of these other codes” – and some view denying this right as a crime<sup>119</sup>: (B6, A6, N4a, N8, N9a,b, N7). Workers are regarded as the best auditors, who know best what they want and who have an interest in changing their situation. The CCC writes:

*Freedom of association and collective bargaining are known as enabling rights because they give workers a tool to monitor their own workplace and to negotiate with management on the improvement of working conditions. This standard is routinely denied in both law and in practice. (Merk 2008)*

Many interviewees agree that workers first need to know about their rights (A1, N4a) and then have to be empowered. However, the opinions on how the right must be realized and who is responsible for doing so vary strongly. This chapter asks: **How should workers be empowered, and what arguments do the BSCI and the FWF present?**

#### 10.3.1 Freedom of association, trade unions and worker associations

Interviewees disagree on the question whether workers should join trade unions to realize their right to freedom of association. On the one hand, CCC and other NGOs argue that workers must join trade unions. They claim that they cannot, because the (structural) conditions in the factories and in the production countries prevent them from doing so. In this view, the power relations inside a factory prevent a proper organization of workers and therefore buyers and other groups have to support an ‘enabling’ environment where workers are free to join a trade union. The FWF argues similarly.

On the other hand, mainly buyers, suppliers and some auditors argue that workers could unionize but do not want to. Various reasons are given, mainly that workers do not see the benefits in unions and that there are alternative ways of empowerment. In this view, solutions can best be found inside the factories, e.g., in workers’ committees. Trade unions, in contrast, are seen as a political task beyond the responsibility of a company. This view reflects the arguments of the BSCI.

#### “Workers must join trade unions”

Workers must make use of their right to organize and they should best do this in trade unions, because this is seen to lead to better working conditions and might help save costs. This view is supported by the CCC, which sees one of its major tasks in the urgent

<sup>119</sup> On a multi-stakeholder meeting of the FLO one participant said that the denial of the right to freedom of association is as bad as child labour. (FLO Meeting in Utrecht, 4.3.2010)

action campaigns which often make public dismissals of workers that join trade unions.

Local NGOs have a similar view:

*Our philosophy has been workers are the best monitors of labour standards. And it is very important that workers' organisations emerge. ... The economic conditions may not be ideal for unions to emerge, but these efforts have to be made. (N4a)*

*If you are an external person coming from away, and you have less power to control, but whereas the union can really hit back immediately with their workers. They will say, you have to pay me this, or I will not work. When you say that, the man has to change, or he has to close the production. (N9a)*

*Social dialogue system is healthy, your workers are like foot soldiers in the war of competition; they know exactly how to improve productivity best. So your accidents will come down, the quality of your products will go up, all these kind of measures. So in the end, the assumption that production costs go up, because you respect labour standards, is outweighed by the benefits that you get from the fact that you respect labour standards. And we have more and more going on that (N8)*

According to this perspective most workers do not know about their rights, and even if they knew about them, they would not complain or unionize. They are seen as constrained by the ‘disabling’ environment in the factory and in the production country. It is criticized that the power relations between employers and workers inside factories do not allow workers to make use of their right to freedom of association (→ CH 9 on auditing). They argue that workers do not engage in trade unions because they fear being fired if they complain and not being guaranteed their working rights if they engage in trade unions (A1, A6, N4b, N9a). NGO representatives say that every worker can be fired immediately with some official excuse, even if he has worked in a factory for 8 years. The high worker turnover is seen as proving this (N4b, N9b). In a nutshell: having this right “doesn’t mean that I respect your right” (A3). A visit in a factory producing expensive German shoes in South India owned by a German company illustrates this problem<sup>120</sup>: During the factory visit the (German) local factory manager openly says that he doesn’t want to have any trouble in the factory; as soon as he realizes that workers are trying to organize, he fires the leader of the group. The following quote illustrates the problem of power relations between employers and employees inside a factory that are connected to trade union activities:

*If anyone becomes part of the union process, they are being thrown out. So generally there is a kind of fear among the workers in a broader perspective - if we are part of the union, if we get into union activities, I may lose my job. So I don't want to be in union. ... I had a few cases that tailors had been terminated and they got a short cast notice. A notice that you have made a mistake; if you don't answer within 24 hours, the management will decide upon your job. Then he doesn't respond. And even if he responds, then they will say that we are not satisfied with the reply. ... So the union is slowly disappearing because of the hard policy of the employers. (N9b)*

Various actors argue that **local/national institutions** in production countries prevent workers from unionizing, for instance the government policies towards trade unions. Some buyers argue that it is almost impossible to integrate trade unions in some countries for reasons controlled by the sourcing country government: In China independent trade unions do not exist, former communist countries in Eastern Europe have large problems with trade unions, in Bangladesh they argue that there are too many, and in export processing zones in Bangladesh, they are forbidden (B2, B5, B8). Also the FWF argues that e.g. in Turkey it is hardly possible to push through freedom of association (N26). Others’ arguments refer to *beliefs*, which are also informal institutions. NGOs suggest

<sup>120</sup> Interview 2005

that producers try to reduce trouble with the workers by mainly employing women, because women ought to be less likely to complain or organize in unions, but are “more concerned of earning their bread and butter”. In contrast, various suppliers in Tirupur argue that it does not make sense that workers fear being fired because due to the higher worker turnover factories are having problems keeping workers in the factory. Workers leave their factory, if the factory next door offers some Rupees more, they explain. Threatening to fire workers, they argue, cannot frighten the workers.

How to achieve freedom of association? NGOs and the FWF say that lead firms should generally prefer unionized factories in their sourcing policies (N4). If this is not an option, buyers should adapt a ‘positive’ approach and build up an ‘**enabling**’ **environment** that actively supports workers to make use of their right to FoA by building or joining a trade union without being fired, particularly in regions/countries where trade unions are forbidden (→ Box 14). Freedom of association is prevented in two ways by the ‘disabling’ environment.

First, there are no institutions that would encourage workers to raise their voice and that reduce the workers’ fear that they might lose their job (N4b). The most important (informal) institution is seen in the trust workers should have to local groups. These local groups would work to help the workers: educate them, build leaders that raise their voice, check workers’ security documents or the contracts, or who ask buyers to demand contracts that refer to the maximum turnover of workers (N4b). NGOs claim that in order to establish something like this, it needs local network structures that support the workers, like grievance mechanisms or local governing boards (→ Box 14 & CH 10.3.2). However, various existing national institutions are rather seen as disabling rather than enabling workers to associate freely. For example, the Bangladesh Economic Processing Zones (EPZ) is an exceptional space where trade unions are forbidden by law to attract investors and promote exports. The “No.1 business portal to Bangladesh” still advertises restrictions in freedom of association as “production oriented labour laws”:

*PRODUCTION ORIENTED LABOUR LAWS. Law forbids formation of any labour union in EPZs. Strike within the zones prohibited. BEPZA is vested with responsibility to administer labour matters for all enterprises in EPZs.<sup>121</sup>*

The FWF argues that it has taken up some of these thoughts in their local partner networks, and the BSCI also claims that it has established its round tables in the production countries to help raise awareness of worker needs (→ CH 7). However, one buyer, who argues that it is very important to install unions, says that it takes a lot of time to install such structures, and refers to the need of time to develop, referring to the industrialized countries that have taken many years during industrialization to establish worker participation:

*Wenn es uns gelingt, hier Formen der Mitbestimmung, der Mitarbeitermitbestimmung in den Märkten zu implementieren, dann ist viel gewonnen. das geht aber nicht von heute auf morgen, und dafür hat auch die westliche Welt Jahrzehnte gebraucht, um zu so einer Form des, ich sag mal, sozialen Dialogs zukommen mit Gewerkschaftern und Arbeitnehmervertretern, dass man auf so hohem Niveau miteinander umgeht, wie wir es hier in der westlichen Welt gewohnt sind. Da sind wir auch zu Beginn der Industrialisierung. Die fangen da an, zu den Zeiten, die wir hier in der westlichen Welt ja auch mal hatten, als Mitarbeiter Mitbestimmung entsprechend auch mal entstand. (B6)*

<sup>121</sup> [http://www.bizbangladesh.com/export\\_processing\\_zone.php](http://www.bizbangladesh.com/export_processing_zone.php), 10.3.2010

Second, one local NGO argues that the workers have a weak position, because they have no contracts and because of the need for flexibility in the industry:

*Some of the traditional trade union ways of enrolling membership and organising may not work in this sectors. Because of the vulnerability of the workers. Vulnerability because of these weak contracts between the management and the workers. The workers can lose their jobs any time. It is a very flexible, quick moving industry, which can move from place to place very fast. So it is very important that, if you want to have workers coming to organisations, it is important to have pre-union structures. So that the organising urge is content. And of course, unions have to emerge. (N4a)*

**Box 14: Creating an enabling environment for realization of FoA locally**

The CCC suggests that buyers should create an enabling environment, which allows workers to organize without being fired:

- *“Companies should not only recognise that all workers have a right to form or join trade unions and to bargain collectively, but they should also adopt a positive approach towards the activities of trade unions and an open attitude towards the organisational activities of workers, which also includes preference to unionized factories in purchasing practices. This includes taking steps to ensure that employees are not subject to dismissal, discrimination, harassment, intimidation, or retaliation because they join a trade union or participate in trade union activities. Furthermore, corporations should also ensure that workers’ representatives have access to all of the company’s workplaces and to all those they represent in order to carry out their representation functions. The companies shall furthermore not impede union organisers’ access to employees, without justification. Furthermore it is necessary to give access to trade union organizers to the facilities, to make the founding of a union possible.” (CCC Full package 2008)*
- *“This should include open communications regarding this policy with the governments concerned. It should also engage the workers collectively and facilitate their self-organisational capabilities in ways that are consistent with the principles of freedom of association and respect for human rights. Moreover, workers should be provided with independent education and training programs concerning their rights at work, and the specific and identifiable steps that are being taken to increase workers’ participation in all of the activities related to code implementation, for example through the establishment of worker committees, as well as consulting and co-operating with local trade unions and NGOs focused on labour-related issues.” (CCC Full package 2008)*

Local groups propose that local governing boards could support this:

- *You don't want to put out some false information about some company, because you don't like them. so the credibility of an audit will very much depend on its actual nature and all precautions taken to avoid slander, to avoid defamation. so it's very crucial to have a strong board of publicly recognized individuals... and one common element will be training of auditors: how to conduct an interview. you can't have 100 people conduct interview and write sth. so we also insist that there must be awareness programs, before you actually interview workers, specifically to look at the social standards within a factory. .... you dont just pick up some workers and ask them. you have at least two hour workshops on social security benefits, on contracts, on appointment letters, on min wages etc. so you have to interview workers who have participated in at least two of the training programs. without that you don't interview anybody. these are the mechanisms that we say will build confidence between the interviewer, or the code, and the workers. ... but we feel that the important issue is awareness-raising workshops. will be part of that. has to be build into the structure. and then we also see that it will be interviews and assessment of the conditions, as reported by the workers, which will result in a report, which will go to the management first to correct, if there are mistakes; if workers are misrepresenting. (N4b)*

**“Workers do not want to unionize”**

While most interviewees agree that freedom of association (FoA) should be granted to workers, by far not all share the view that workers must achieve this through trade unions. Workers are seen as reluctant to unionize for different reasons. Most factory managers claim that workers can organize and that they are open; workers can always approach them with problems, and they will discuss the problems with the conflicting parties<sup>122</sup> (A3, S2, S6). Similarly it is argued that ‘freedom of association’ is a right and not a duty, and that they will not force workers to associate if these do not want to do it voluntarily (B8, N26). Three main arguments are presented that shall explain why workers do not want to join trade unions.

First, some managers and consultants blame the **workers’ mentality** as a reason why there is little trade union activity. For instance, one consultant explains that workers think

<sup>122</sup> This can certainly be related to the bias of data selection that managers were open for the interview, who are also more open for workers.

that it is wrong to go to the management cabin and complain, and that they will be fired if they do so. With reference to Hindi movies he argues that workers have a subservient mentality that is rooted in their socio-cultural history: “(in) old Hindi movies you see this culture very well. The boss comes, and they are supposed to stand and bend over for him” (A3). In addition, **migrant workers** are seen as trying to earn as much money as possible and thus not interested in paying money for unions (S7) or in organizing unions, because this also keeps them from working and earning money. Local NGOs admit that workers do not complain about the situation at work (N9a). However, they do not argue that this is the workers’ mentality, but structural reasons like job insecurity and the permanent risk of being fired for minor problems.

Second, particularly producers and local auditors criticize **trade unions as corrupt and politicized** (S7, S8, A1, A3, A6) and as not representing or serving the workers. Politicians might use unions to instigate trouble against their opponents, unions might talk more about political issues and thus detract from issues within the factory, and they try to collect votes for the party from the workers or collect money from the workers or the management (S2, S7, A6). Local NGOs confirm such problems:

*Some experience that I have had, where the workers themselves said, we don't like trade unions. Because they only take money from us as membership. They don't do anything for us. They strike, and then, ultimately, lie and starve at home. So I am not interested in that. (A3, A6, N9b)*

The politicization is seen as a problem that makes cooperation with trade unions difficult. For instance, they are said to discuss every move with their political party before agreeing to a decision (N9b). A local NGO explains that the FWF tried to include local trade unions into audits, but nine local trade unions were not able to select a committee that would represent the unions in audits by the FWF:

*Why do have to form a committee? It isn't a very futuristic approach. Why do we have a committee? You can deal with each union as respectable organisation. ... Even after their approach, again three years back, we were attempted to form a committee, and the bigger unions allege, if the smaller ones were elected, then we have to honor him - which is not possible. The smaller will allege: ok, the bigger ones are being elected by choice - the bigger ones always keep the smaller ones away. So the smaller ones say, we don't want the bigger ones. The bigger ones say you are organising 100 people, why should I have to admire him. (N9b)*

However, despite these problems many NGOs also argue that trade unions should not be condemned in general, and that there are large regional differences between politically affiliated trade unions and independent or free trade unions. The latter are more interested in the workers’ rights (N9, N26).

Third, the workers’ reluctance to join trade unions is also explained with arguments that construct **trade unions as bad for economic development**. It is regarded as a threat to the competitiveness of factories and eventually to the workers’ jobs. The reluctance against trade unions might be normal company behaviour, as a German consultant says (A4). It is stronger in Bangladesh and in some parts of India, where many see trade unions as politicized or corrupted. One supplier sums up a view shared by many: “The more unions the more problems. With no union there is no problem” (S7). Some auditors argue that managers connect the existence of trade unions with an increased number of strikes, which are seen to raise production costs. Workers and managers fear that factories may close down, if trade unions protest too much (A1, A2, A4, A6):

*They have experienced unionization so often, so they are not encouraged to do any kind of thing. If*



*you know very well East Bengal. There were approximately 95 textile mills, jute mills, due to this union politicising, out of these 95, 91 are closed now. They striked, and only four are left. So this is not good. All are unemployed. So, taking this experience, any of the factory people, especially the lower price worker, who is to earn money for the food. (A1)*

*The history is such, that the trade unions and the associations have only hampered work. It has cost a lot of closing down the factories. A lot of strikes and ... things like that. So the management has always been no no no to the trade unions. So they have a very different image. (A6)*

The argument that trade unions support strikes and that strikes destroy the economy was also widely reflected during the strikes in the ready-made-garment sector in Bangladesh in 2006, when factory workers protested for higher wages (→ CH 8.2.3). Factory owners in Bangladesh and the associations representing them claim that striking workers and “so-called trade unions” are a problem to the working atmosphere in the industry. In their view, establishing trade unions will be “suicidal” for the whole national garment industry – and in conclusion the employers’ representative body, BGMEA, demands that the industry should be kept ‘above politics’:

*If Trade Union / CBA is established in the garment industry it will be suicidal because of the attitude of the political leaders of Bangladesh. The CBA leaders will be close associate of the leaders of that area, the local leaders will act as guardians of the CBA leaders and the factories will be a common place of visit by the leaders, and the factory workers will start thinking of getting paid even without working (Article by a factory owners in TDS722).*

*Allowing so-called trade union would destroy the working atmosphere in the labour intensive factories ... If the garment factories close down, there will be a multifaceted effect in the society with over two million workers losing their jobs and all the related industries and business sectors like bank, insurance, transport, accessories, and ports facing a debacle, the speakers said. They said the garment sector should be kept above politics and the recent situation in the sector should be judged from realistic point of view.<sup>123</sup>*

### **Workers should use worker committees**

Many companies and the BSCI try to find management solutions for enabling freedom of association within factories, arguing that the national government should deal with political issues. One BSCI member argues that in some regions it is not possible to introduce trade unions. He regards freedom of association and trade unions as less important than, for instance, improving issues referring to health & safety, because there are solutions for empowering workers inside factories (B16). If workers protest too much, the situation gets too insecure for buyers.

In 2006 when workers demonstrated for higher minimum wages and when there was turmoil in the country, European buying companies threatened to withdraw orders from Bangladesh: “Buyers are not sure about what is going on in Bangladesh and what will happen here next week. It creates uncertainty and the buyers tend to shift to other countries”<sup>124</sup>. In sum, buyers are more reluctant in establishing union structures, arguing that workers do not have to join or found a trade union, but that they have the ‘freedom’ to do so (B9, B16). Particularly buyers, suppliers, auditors and consultancies argue that they do not see the necessity for workers to build trade unions, as long as they *do* organize somehow (B16, A6).

Many companies argue that they prefer working with solutions inside the factory

<sup>123</sup> The Daily Star 11.6.2006 “Owners oppose minimum wage, TU at RMG units”: <http://www.thedailystar.net/2006/06/11/d6061101139.htm>, TDS724

<sup>124</sup> The Daily Star Bangladesh, 1.9.2006 quoting Arnd Bornemann, manager-Bangladesh operation of KarstadtQuelle said recently

instead of trade unions, which they regard as ‘external’ to the factories. They regard workers’ committees or ‘open forums’ as adequate solutions, in which the problems of the workers are collected and discussed inside the factory (S6, S7, S10, A1, A3, A6, A8). One major advantage of such committees is seen in their focus on the problems within the factory, instead of dealing with ‘political’ issues that they see as not connected to the workplace but rather to party policies. Often such committees already exist, dealing with issues, such as welfare, sexual harassment, health & safety etc. (A6).

*There is a company here in Bangalore, it is a small company, maybe 150 or 200 workforce, they have, I think, first Saturday in month an open session of the CEO ... The satisfaction the people are having is very high. Because he has an open forum, where you can come down to the canteen, and you speak whatever you want. Absolutely good systems are there. (A3)*

*People are educated nowadays. They know what freedom of association is. There is no problem for association. And they know their own issues. They make committee. So if you go into garment industry, you will find women's committee, stitching committee, and all. Parallel to union, they will address their issue, they note down all applications. They discuss with the management. And they not only issue their own issue, they also think about their companies issue. (A1)*

However, NGOs and auditors claim that several **problems are connected to worker committees** and many criticize them for not working (A3, A1, A4, N4b, N2, N9a). Problems with committees are said to originate in the situation that they are located inside the factory, where managers can exert power. Problems are seen in the lack of transparency and control of the committees, i.e., workers’ committees might just be on paper and workers that are listed as members, without knowing of it; and if they exist, they might be biased. Local NGOs similarly complain that they have not yet seen a committee that was democratically elected by the workers, as it should be, but only such that are appointed by the management. In such committees it is not certain, whether workers can talk freely. The following quotes sum up some of the problems seen in workers’ committees.

*They are just namesake. These are just formulated just on paper. Some of the members don't know they are members. There are no minutes of these worker committee meetings and this is what auditors themselves say. There is just a list of workers and hardly anything happens. (N4b)*

*There are a couple of other companies also in Tirupur, where management and workforce have a very good set up. But sometimes again, it can get a little bit biased. (A3)*

### 10.3.2 Complaints mechanism

Complaints (or grievance) mechanisms are seen as an additional tool to empower workers and to make a private standards initiative more credible. The CCC suggests that such a mechanism “balances and supplements the limitations of ‘snapshot auditing’”, as it allows workers to voice their grievance at any time (Pruett 2005:77).

However, even if most suggestions to realize a grievance mechanism try to escape the power relationship between the manager and the workers, the understanding how it should be best realized vary quite a bit.

Many auditors and consultants suggest that they provide workers with a ‘complaints mechanism’ by giving workers their addresses (A1), or by installing complaint boxes in toilets (B1, B2, B9, S2, S7, A6, A8):

*Why not you have this kind of suggestion box? It will help them to open up. Because a lot of people .. - I mean, how many of us will be able to speak on a stage. A lot of people have a staged fright. a lot of people have a people fright. Not for any reason that the management is unfairly of the supervisor will*

*some kind of victimise him; sometimes it is also a personal fright. ... where this box is open in front the workers' committee, they open it up and there is no name written. So you are free to talk anything. even the management can put in something. ... even the management has certain issues to address the work. (A6)*

The BSCI communicates ambivalence regarding the complaints mechanism. On the one hand, members have argued that it is not easy to set up a complaints mechanism and that it might not even be necessary. The very few complaints the FWF or FLA handle each year are seen as evidence that the system is inefficient (B16). Instead, factory managers are not regarded as bad people but as lacking skills. In addition, it is seen as not easy to set up a 'proper' mechanism done "like NGOs are often demanding" (B16): by involving stakeholders or even trade unions, which might be difficult due to the "incompatibility between suppliers and TU in some parts of the world". Finally, buyers claim that workers would have to use it, which might also be difficult (B5, B16). In January 2009, a BSCI representative (B16) concludes that the BSCI does not manage to install such a system. He argues that it is not needed, because the current BSCI-standard of auditing is high and sufficient for identifying major labour-rights violations in the daily business (i.e. health & safety, child labour, overtime) (B5, B2, B4, B16). BSCI members argue that it is already a large step, if all the health & safety issues are settled in a factory, even if there is no trade union in a factory (B16).

*Es sind ja nicht alles böse Menschen, die eine Fabrik führen, also das muss man sich auch bewusst sein. Die haben ja auch ein Ziel, sie wollen ja auch irgendwie produktiv sein, sie wollen ihre Aufträge erfüllen, also man kann, es gibt auch dort gute Unternehmer. Und wenn es halt nicht so ist, dann muss man sich halt überlegen, ist dann der 'Complaints'-Mechanismus wichtig oder ist das einfach kein Partner für uns. Eben es ist irgendwo noch vorhanden diese Idee, dass man dem nachgehen muss, aber es ist nicht ganz klar so das Konzept, was dann auch funktioniert und was bringt. (B16)*

*Dass mal 20 Leute rausgeschmissen werden, all die sich einer Gewerkschaft angeschlossen haben. Das sind so typische Fälle, wo so ein 'Complaints'-Mechanismus sicherlich funktioniert. Für andere Situationen, die so das Tagesgeschäft bestimmen, und im Moment für uns viel wichtiger sind, weil sie wirklich täglich passieren – wenn die Leute täglich dazu gezwungen werden, Überstunden zu machen – dann brauche ich keinen 'Complaints'-Mechanismus. (B5)*

On the other hand, annual reports said that such a mechanism shall be established, and in November 2009 the BSCI announced that it has built a complaints procedure in China and India:

*One other task of the new BSCI representatives in China and India will be to collect complaints by employees of factories who feel unfairly treated according to the social rights detailed in the BSCI Code of Conduct. With this complaint procedure, the BSCI is taking a further important step towards ensuring credible monitoring and improving working conditions in local factories."<sup>125</sup>*

The CCC criticizes this as no real complaints mechanism.<sup>126</sup> It demands that companies have to provide workers with the possibility to complain whenever they think their rights are violated, i.e. a complaints mechanism that has the workers' trust:

*Workers and other stakeholders should have access to secure, anonymous, confidential, and an independent mechanism for the registering of complaints when they believe their rights are being violated. It is crucial that workers are able to report violations of a code of conduct or national labour laws without having to fear disciplinary action. Good complaints mechanisms would provide workers, trade unions, and NGOs with the tools to address breaches of labour standards among the suppliers with buyers, instead of having to wait for the next social audit. (Merk 2008)*

The FWF verification system includes a complaints mechanism that is described in their own words as "fair and effective and local". It works through local complaints handlers,

<sup>125</sup> [www.bsci-eu.org](http://www.bsci-eu.org) (3.11.2009), <http://www.csrnewseurope.com/article.php?articleID=199> (2.5.2010)

<sup>126</sup> Personal communication CCC, March 2010

who shall be:

*... accessible: Because they are based locally, they can be reached in the time zone and on a local number. In most cases, complaints handlers are also the worker interviewer during audits, which means workers have seen them and can put a face to the name on the information sheet.*

*... can understand: They speak the local language(s) and English, allowing them to follow up on details with workers, FWF staff, and FWF affiliates. This means better and faster follow up.*

*... are trustworthy: Handlers are usually female representatives from labour or women's NGOs. They are able to communicate with workers in a way that enhances trust.<sup>127</sup>*

FWF members praise the FWF complaints mechanism. One member argues that they had been naïve in thinking to provide the workers with their contact details, because the worker would have a too high mental barrier to contact him. He claims that the FWF is much better because it works through local people, who share language and mentality with the workers (B1):

*Also für ein Beschwerdesystem in meiner Naivität habe ich ja damals in diesem Pilotprojekt gesagt, Beschwerdesystem ist doch prima, gebt bitte den Leuten unsere E-Mail und Fax Adresse und von mir aus meine persönliche Telefonnummer. Aber natürlich ist es so, dass die Näherin da eine mental hohe Hürde hat, weil sie natürlich denkt, durch die kaufmännische Verknüpfung wird sie uns wahrscheinlich gar nicht trauen. (B1)*

### 10.3.3 Summary and conclusions

The discussion shows that the issue 'freedom of association' is important to most actors. However, there are different viewpoints how it should be put into practice. The analysis indicates that the question, whether workers can and want to associate freely, is strongly formed by the prevailing discourses and deeply embedded into local and global contexts of the GPN:

- There are struggles regarding **how to empower workers**: Whereas some actors propose a more political solution, others propose more technical solutions inside factories. Civil society organizations and also some companies claim that freedom of association and the forming and joining of trade unions is maybe the most important right of factory workers, whereas the business side argues that workers' disinterest in forming trade unions shows that the right to freedom of association is not that important, and if workers really want to associate, they can always do this through worker committees in the factories.
- The different viewpoints are connected to different understandings of CSR. One side follows a more **political view of CSR** according to which lead firms should help create the enabling structures within the countries and within the factories that empower workers to complain and build trade unions. The other perspective (**positivist CSR**) would rather propose management solutions within factories without the need of additional groups like trade unions. The second perspective does not recognize power relations within the spaces of a factory.
- The BSCI argues that workers needn't realize their freedom of association in trade unions, but can do it equally well in **worker committees**. Issues like trade unions, freedom of association, and wages are regarded as political questions that companies

<sup>127</sup> [www.fairwear.org](http://www.fairwear.org), 16.12.2009

do not have to deal with. Supply factories shall rather work on issues inside the factory. Various companies and their representatives in the producing countries and many buyers support this perspective. In this context, trade unions are framed as corrupt and politicized, which might be true to some degree, but there are also trade unions that act in the interest of workers.

- The CCC and local NGOs argue that **local institutions** have to be set up that empower workers and create an enabling environment. They refer to the need to build up local formal and informal network structures generating trust between these groups and the workers. Within factories workers fear to speak freely, therefore solutions inside factories are not preferred, as long as such power relations do not change. FoA and the inclusion of local groups (trade unions, workers advocacy groups etc.) are seen as highly relevant. The FWF has established local partner networks and local complaints mechanisms to empower workers by interaction with these groups.
- Civil society actors favour **trade unions** that are situated outside factories, where workers are said to speak freely, but also have access to the factory. However, trade unions are more generally criticized for having a bad influence on factories and the whole economy. This is connected with claims that unions are too much **embedded** into local politics and that they do no good to factories and workers. It is suggested that this frightens workers or might be used strategically to frighten workers. The BSCI, e.g., suggests replacing trade unions with worker committees.

## 10.4 Discussion and conclusions

This chapter aimed at answering the question: **How do lead agents frame and legitimize their corporate responsibility practices or the ‘right’ practices regarding the implementation of standards (i.e. executive regulation)?** The question is relevant because basically every examined company claims that it takes responsibility for improving working standards, while the CCC criticizes the practices of many companies.

**Table 19: Comparing the BSCI and FWF approach to executive regulation (own design)**

	BSCI	FWF
<b>How are the problems and their origins framed?</b>	The main problems are seen in the lack of skills of suppliers, which lead to low efficiency and low productivity.	The main problems are seen on the suppliers side, but also on the buyer side. Suppliers must be qualified, but also buyers must learn to change their sourcing policies. The FWF has developed several instruments to enable a change in sourcing policies.
<b>Who is mainly responsible for solving the problems?</b>	The main responsibility lies within the producing countries, and is shared between the suppliers and the governments. The buyer supports the suppliers in these efforts.	Based on the multi-stakeholder idea, the FWF claims that different stakeholders share a responsibility. The responsibility is seen as depending on the economic power of an actor.
<b>Which instruments are appropriate? Purchasing practices</b>	The BSCI vaguely says that the purchasing practices can prevent suppliers from implementing standards, but it does not define any rules	The FWF defines management system requirements, which looks exactly at the purchasing practices. Through the management system audits the FWF tries to find out whether a members’ supplier is able to implement standards effectively. It publishes these results.

<b>Which instruments are appropriate? Training</b>	The BSCI focuses on qualification of suppliers and conduct awareness trainings for suppliers. Further, it recommends that consultancies shall support making the supplier more productive and efficient.  The buyer and supplier have to agree on who pays.	The member company should inform the suppliers, but they are not required to train the suppliers' management.  Buyer and supplier have to agree on who pays.
<b>Which instruments are appropriate? Empowering workers</b>	The BSCI conducts worker awareness trainings and recommends the members to also do so.	The member company should inform the workers about the CoC, the monitoring and the remediation.

#### 10.4.1 Struggles in executive regulation

Many of the struggles in executive regulation can be analysed by using the GPN framework.

##### **Lead firms' power entails responsibility**

According to one view (supported mainly by civil society actors) lead firms in global production networks hold **power** over their suppliers. This claim corresponds with much of the academic literature on buyer-driven global commodity chains (→ CH 2.1.2). NGOs argue that global buyers are powerful because they buy large volumes and because they can select where they produce. Their power allows them to demand that their producers implement social standards. As Iris Young argues (→ CH 2.4), the power puts a lead firm in a privileged position in which it shares a larger part of **responsibility**. NGOs further argue that due to the huge profits large brands and retailers make, and due to the (relatively) little money it costs to improve working conditions, lead firms must support producers to implement the standards. For instance, they demand that lead firms must pay 'fair' prices. One suggestion to calculate 'fair' prices is to use the exact time measurements to come to a fair wage. However, the CCC claims that brands and retailers rather reduce prices than increase them. The FWF mostly shares this view, and therefore focuses its efforts on working on the structural conditions in the supply chain caused by the lead firm.

The CCC and other civil society actors furthermore demand from lead firms to be **transparent** about purchasing practices. This transparency mainly entails naming the suppliers, disclosing audit reports, and presenting more information about the purchasing practices. Even though the FWF only has an internal transparency, where detailed findings are only made transparent to the FWF staff, the CCC accepts this kind of transparency, as it is carried out by a multi-stakeholder initiative.

##### **Lead firms are not powerful and their responsibility is limited**

However, the analysis shows that many do not share this view. There are three main counter-arguments.

##### ***Lead firms are not necessarily powerful***

Many lead firms argue that they do not have the power to force their suppliers to implement social standards, which opposes arguments of buyer-driven supply chains from chapter 2.1.2. There are three main arguments. First, lead firms suggest that power cannot be determined as a characteristic owned by every lead firm. In their view, the **power** they hold over their suppliers **depends on each single order**. The argument is that

it very much depends on how much an order of a lead agent fills the capacity of a factory. As the findings show, this can take any value between maybe 0.1% and 100%. If an order is only a small percentage of the factory capacity, the lead agent has little power. Many lead firms argue that they are powerless against larger suppliers, either because they themselves are very small or because the suppliers are very large. Some buyers also argue that they do not hold any power over producers with whom they do not have any direct contracts. The CCC and the FWF counter these arguments by saying that lead firms should select the right supply chain partners and can thus enhance their power. However, this neglects that lead firms may be happy quality-wise with a supplier and not willing to change the partner. Companies rather argue that they can improve the working standards in the factories step-by-step.

Second, lead firms suggest that the decisions they take are **constrained by their embeddedness into global competition and the fashion system**. According to this argument, a lead firm is not fully free to set the purchasing conditions as he wishes (like some scholars using the GCC theory often suggest), but this power is limited by external factors. For instance, many lead agents argue that they cannot raise the FOB **prices** they pay for a product to enable the implementation of standards (as the CCC demands), because they would not sell the product anymore. Many companies seem to regard such limits as factual. However, the price paid for a product depends on multiple factors, and it is hardly possible to pinpoint these because of the variety of the products. Further, many lead firms argue that factories should work more productively to compete and that they do not want to subsidize factories that do not work efficiently. It would be interesting to analyse how lead firms come to the conclusion that a certain FOB price is a maximum price and cannot be increased, something this research could not do.

However, many lead firms do not share the view of NGOs that the prices they pay are too low and need to be increased. These companies believe that as long as a producer is found who is willing to produce, this is normal and good economic **competition** that leads to the most productive supplier getting an order. Instead of increasing purchasing prices, such lead firms suggest to suppliers who are complaining about low prices that they should raise their productivity, e.g., by improving management skills. This perspective neglects two issues: One, costs that are saved by gains in productivity are first of all seen as profits and not necessarily re-invested into CSR. Two, economic competition is said to work efficiently under perfect market conditions. However, usually there are no perfect markets (→ CH 3.1.3).

The BSCI aims at implementing national laws and thus generating more of a level playing field in social standards between different actors. But its voluntariness allows companies to free ride and save costs with regard to social standards, as members criticized. Therefore we cannot speak of a situation in which the national laws are guaranteed. Factories can thus still win the economic competition by saving costs on the social end, as the CCC suggests. In addition, this perspective does not recognize that global competition structurally forces national governments also to adapt their laws to being attractive to investing companies, but not to workers, for instance by keeping the national minimum wages very low. Instead of seeing a shared responsibility in improving

the purchasing policies (→ CH 2.4) the BSCI argues that it is the responsibility of the governments to make good laws.

The results suggest that some national governments, like Bangladesh, compete a lot on cheap labour. To properly evaluate, in how far global competition also prevents discounters from implementing 'fair' purchasing conditions, these companies need to become more transparent about their supply chains, their purchasing conditions and their auditing practices. So far, the results indicate that the approach to CSR taken by companies – even if they are all member in the BSCI – can differ enormously and thus lead to different impacts (compare Hughes 2005).

Third, the **power** of a lead firm depends on his **possibility to terminate the relationship with a supplier**, if the supplier does not comply with his demands. Lead firms very quickly change their suppliers, if these do not deliver the required quality. However, BSCI and FWF follow so-called developmental approaches, according to which the lead firm shall try not to cancel the relationship with suppliers, if these do not follow their social standards; the standards shall rather be improved in a stepwise approach. What is being done is not at all transparent in the BSCI, while the FWF has started publishing the management system audit reports. However, I suggest that the developmental approach reduces the power a lead agent has against his supplier. Particularly if audits do not reveal the factual problems in a factory, e.g., because the supplier can cheat, the lead agents' power against the supplier is very low regarding the implementation of social standards.

#### ***Power does not entail responsibility***

The BSCI and many member companies argue that even if lead firms are powerful, they are not mainly responsible for what happens in the factories in their supply chains. In their view, the lead agents take the responsibility to initiate the improvement processes, while the main responsibility for improvement lies with the producers in the production countries, the governments and the local stakeholders. The argument is that producers need to act according to the national laws and the local stakeholders have to make sure they do. Issues like structural power or structural injustice are not recognized. If a producer can only participate in the market by exploiting the workers, the producer gets some time to improve the standards, and if he cannot manage, he must stop producing. Hence, in this view, the lead firms' shared responsibility is limited to initiating processes of improvement. Contrary to Young's (→ CH 2.4) position, structural injustice is neglected. The processes also do not have to be made transparent, because the companies are not liable to the general public. This corresponds to the positivist CSR model (→ CH 3.1).

#### ***Partnership rather than power improves working conditions***

There is a general understanding among the interviewed brands and retailers that their relationship to their producers is based on **trust** and **partnership relations**. They argue that in their purchasing practices they try to build up long-term relationships with 'strategic' suppliers. It is seen as efficient to invest in suppliers to whom there are long-term relationships. They try to make them more efficient and try to raise the working standards. This way standard implementation shall get more efficient. However, although



many argue that they try to keep fluctuation in the supply base low, it is argued to be unavoidable, although it seems to differ strongly. Also outsourcing is argued to be not always controllable, even if the relationship with the supplier is good.

Some see a contradiction between the trust-based relationship to the suppliers and the power exerted through demands for standards. They say it might lead to a situation in which the lead firm loses his suppliers' trust, and this would be fatal for the actual aim of production, i.e., the production of fashion garments.

Another problem to a good trust relationship in the supply chain is seen, if the lead firm engages too much with the workers, as managers mistrust them. However, these relationships are seen as relevant, for **empowering** workers. If empowerment should work properly, some argue, workers need to trust those who empower them. They refer to problems of trust inside the factories, where managers are powerful, or in export processing zones where an institutional structure is missing that protects the workers from organizing collectively. Outside factories, the managers are said to hold no power over the workers, and therefore NGOs suggest that workers should organize outside factories and not in so-called worker committees.

### **Mandatory rules**

The CCC argues that buyers have to adapt their purchasing policies so that their suppliers do not need to suffer under the conditions of competition. However, it also argues that voluntary regulation has not brought about any changes and has only led to 'green washing', and demands mandatory international rules from the national governments or the EU or the WTO.

*Freiwillige Selbstverpflichtungen der Handelskonzerne haben zu nichts geführt, sie werden nicht umgesetzt. Sie dienen einzig dem 'Greenwashing'. ... Grundsätzliche Änderungen von Einkaufspraxis und Unternehmensstrategie gibt es nicht. Deshalb sind von der Bundesregierung über die EU bis zur WTO verbindliche grenzüberschreitende Regeln einzuführen, damit Unternehmen bei Verstößen ihrer Zulieferer gegen Menschenrechte und Umwelt haften müssen. ... In Sinne einer wirklichen Verbesserung von Arbeitsbedingungen ist aus Sicht der CCC entscheidend, dass nicht über immer neue freiwillige Instrumente nachgedacht wird, sondern dass endlich verbindliche Regeln für ein sozial verantwortliches Handeln international tätiger Unternehmen gesetzt werden. (KsK 2009a:1ff)*

### **10.4.2 Two approaches to executive regulation and corporate responsibility**

The analysis in this chapter indicates that the BSCI and the FWF have a different understanding of corporate responsibility and of how it shall be executed through executive regulation. The main differences touch three questions: How are problems and their origins framed? Who is mainly responsible for solving the problems? Which instruments are appropriate? The remainder of this sub-chapter sums up the view of the BSCI and the FWF on these questions (→ compare Table 18).

The analysis of arguments and practices regarding executive regulation suggests that the BSCI reflects the *positivist* concept of CSR, whereas the FWF reflects a *politicized* concept of CSR (→ CH 3.1). I claim that the BSCI tries to build up pragmatic legitimacy, but that it does not manage to build up discursive/moral legitimacy. The FWF, in contrast, manages to build up a form of discursive legitimacy.

### **BSCI**

Most of all, the BSCI argues that poor working conditions in supply factories are mainly

caused by bad management practices, which result in bad planning, low efficiency and low productivity. The BSCI member companies are seen as responsible for *initiating* improvement processes in their supply chains. Audits determine the improvements that have to be implemented in a factory, and usually suppliers have to implement these. BSCI members can support their direct suppliers to execute these improvements, if they want to. However, producers and stakeholders<sup>128</sup> in the production countries are seen as mainly responsible for resolving the problems, because they cause them. As the problem is seen in bad management, the proposed solution focuses on qualification of managers. The BSCI allows members to engage more or less in implementing standards. For instance, one company might be paying the audits and trainings for all of its suppliers, whereas another one sources from importers and transfers qualification costs to them. The importers then often again transfer the costs to their suppliers. Further, the BSCI recommends members to sensitize and train the staff from the buying department in the company to adapt their purchasing practices; but it does not demand or control whether these are changed.

The CCC criticizes that lead firms use their **power** in the supply chain (→ CH 2.1.2) to pass the responsibility (and costs) for implementing standards to their suppliers. In the end, buyers exert pressure on suppliers, who would pay the costs. The empirical findings, however, show that this is not necessarily the case. Some BSCI members say that they pay costs for certain suppliers, either because they want to support them or because they do not have the power to push through their demands.

However, these details are not made transparent, i.e., the claims of the CCC and of the companies can both not be verified. Results show that the possibility to pass the responsibility and costs of implementation to the suppliers has led to the situation that, for instance, a BSCI with a turnover of \$800 million employs only one person on a 20% basis to deal with CSR issues. The CCC criticizes that this way a company cannot take responsibility for the workers.

I argue that the BSCI has created a system in which single member companies can almost **free ride** regarding the costs they need to pay for taking responsibility, which is also criticized by some BSCI members<sup>129</sup>. Members, who pass costs to their suppliers, can still use the BSCI label and say that they take responsibility, which might protect them in terms of reputational damage. Members, who engage more in taking responsibility, criticize this kind of free riding. The way **transparency** is dealt with in the BSCI enables such free riding. The BSCI publishes its overall audit results (→ CH 8.1), which only indicates a general trend. These figures do not make single companies accountable, but rather protect them, indicating that there is overall progress. The lack in transparency could be interpreted as trying to achieve legitimacy without engaging in public discourse about the problems more concretely. The case against *Lidl* illustrates this problem. The discounter advertised as being a BSCI member, but major non-compliances in factories were found. The lawsuit suggested that this deceived consumers. In terms of

<sup>128</sup> Mainly governments, NGOs, trade unions

<sup>129</sup> For instance, one BSCI member with a turnover of around \$800 million employs one person 20% to take care of the BSCI issues.

pragmatic legitimacy, the company tried to persuade key stakeholders of their legitimacy through strategic public relations (→ CH 3.1.3, Box 4). The reference to the BSCI now turned out as a failed attempt to gain pragmatic legitimacy.

#### **FWF**

The FWF claims that the buyers and suppliers both cause the problems and therefore share the responsibility to improve the working standards (→ compare Iris Young: CH 2.4). The main focus, however, is on the lead firm (i.e., the FWF members), who the FWF sees in a privileged and more powerful position to make changes than the supplier. Not all companies share this view, but the FWF argues that the members have to select such producers that are prepared to take responsibility.

Members have to disclose their whole garment supply chain (including subcontractors) to the FWF. Their purchasing policies are examined and evaluated in a management system audit<sup>130</sup>. By annually publishing reports from these audits, the FWF aims to ensure transparency of the changes in the single firm, which makes the single firm accountable for their practices. The focus on the members' purchasing policies supports the argument that the members take responsibility for changing the working conditions in the supply chain, without transferring responsibility down the supply chain.

Further, to improve standards in the factories, FWF members engage in discussions with their suppliers and with local stakeholders and discuss with them what is needed to improve the situation. These might be issues like management skill training and qualifications, raising workers' awareness etc. This is not set, but the MSA audit reports annually make public what a single company undertakes.

In addition, the FWF uses a local complaints mechanism to empower the workers. This mechanism is accessible to the workers and protects them. It is therefore questionable, why they do not use it more.

I argue that the efforts a FWF member company has to take to meet the initiatives' requirements and the transparency granted, allows a better public discourse and critique than in the BSCI and can be seen to be in line with the *political CSR* concept. However, it is questionable how good the quality and scope of inclusion is and there are also limitations regarding the transparency, which do not allow a full discourse on the issues, as local NGOs criticize. I suggest that it needs a more detailed analysis, whether the transparency allows this.

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<sup>130</sup> The first management system audits were conducted only briefly before the finishing of this book and could therefore not be examined in any detail.

# 11 Discussion and conclusions

This research has examined how different organizations – mainly companies, private standards initiatives, and NGOs – contest the corporate responsibility of garment brands and retailers for improving working conditions in global production networks. In this final chapter I sum up the answers to the following questions from chapters 1 and 4:

- How do actors contest the causes of poor working conditions?
- How are the CSR practices of the BSCI & the FWF legitimized and contested?
- What limitations does voluntary regulation have? How can voluntary approaches be evaluated?
- How can the understanding of corporate responsibility of the BSCI and the FWF be conceptualized theoretically?

Finally, I point out some limitations of the research and conclude with some practical recommendations.

## 11.1 Contesting the causes of poor working conditions

Table 20 subsumes the causes of poor working conditions that I identified in the empirical research under the three categories embeddedness, power and value (→ CH 4.2).

**Table 20: What causes poor working conditions in global production networks? What different groups believe (rough trends).**

Analytical dimension	Causes	BSCI	FWF	NGOs	producers
<b>Embed- dedness</b>	• <i>Global competition</i>	No	Yes	Yes	Y&N
	• <i>National governments must regulate labour issues</i>	Yes	Y&N	Y&N	No
	• National regulation does not function	No	Yes	Yes	No
	• <i>Fashion system &amp; consumer demands</i>	Yes	Yes	Yes	Yes
	• Creating demand for cheap clothes questioned	No	Yes	Yes	No
	• Good trust relationship with locals necessary	No	Yes	Yes	No&yes
<b>Power</b>	• Purchasing power disables standard implementation	No	Yes	Yes	Yes&No
	• Poor power of workers in factories	No	Yes	Yes	No
	• <i>Belief that human problems are best improved by technical solutions based on power</i>	Yes	No	No	Yes
<b>Value</b>	• Consumers demand cheap clothes (→ see embeddedness)	Yes	Yes	Yes	Yes
	• Poor management skills	Yes	Yes	Yes	Y&N
	• Beliefs about costs of implementing standards	Yes	No	No	Yes

Some of these causes are what Iris Young (Young 2004; Young 2006) calls ‘structural background conditions’ – i.e., the rules and structures that actors accept as normal or take for granted in their daily actions and routines (→ CH 2.4). I suggest that the following

four causes are such background conditions: (1) global competition (2) the fashion system, including consumer demands for cheap clothes, (3) the belief that national governments must regulate labour issues, (4) the belief that human-related problems can be solved with technical management solutions. In addition to these ‘background conditions’ various other causes of labour rights violations at production factories are pointed out.

The findings indicate that different actors in the GPN take different background conditions for granted (→ Table 20). While most CSR approaches only deal with some of the causes, I argue that all causes need to be dealt with in order to solve problems connected to poor working standards.

### 11.1.1 Embeddedness

#### Global competition

Corporate actors in Europe and in production countries argue that global economic competition prevents them from investing much money in CSR practices. Many companies (lead firms and suppliers) claim that the demands of NGOs to extensively respect human rights are not ‘realistic’, ‘pragmatic’ or are even ‘utopian’, as the companies want to remain globally competitive. The example of living wages illustrates this dilemma: BSCI members regard the costs for implementing living wages as too high. They argue that production will be more expensive, and buyers will move to competitors. In addition, BSCI and members say that it is the responsibility of governments and production countries to set an adequate wage level. However, producing countries’ governments and factory owners claim that national minimum wages cannot be raised too much, because otherwise investors would leave the country. Factory owners even argue that politics should stay out of business (→ CH 8.2).

In contrast, the BSCI, some suppliers and consultants do not accept the complaints of many producers arguing that global competition does not allow them to respect the laws, and regard competition as a ‘normal’ situation in an open free trade market (→ CH 10.1). In their view, good working conditions that are determined by the laws can be achieved within a competitive environment. They argue that producers who do not work efficiently and who do not work according to the laws should not produce. If a producer thinks the price paid for an order is too low to produce the goods according to the national labour laws, he has the responsibility to decline this order. The problem with this view is that it does not take into account three issues:

- First, factory managers or owners and their employees are not the same actors; if the employer decides something, this need not necessarily be the employees’ wish. This is particularly problematic when managers are influenced by their local socio-cultural context in such a way that they do not treat their workers well.
- Second, many producers have a different perspective on working rights than worker representatives. They frame providing work as charitable and see that it is better for the workers to have a job (that might be badly paid) than to have no job. This

corresponds to the opinion of those arguing in favour of sweatshops, like Paul Krugman did<sup>131</sup>.

- Third, if national governments and their laws do not adequately protect workers, this position allows producers to exploit workers. We simply do not know, whether the factory managers arguing in an interview that it is no problem to comply with the laws in global competition are in reality complying with the laws.

These findings suggest that competition can be used as an excuse for violating human rights, which is only possible in a voluntary system.

### **Regulation of labour laws by the producing country governments**

Many lead firms (in particular BSCI members, not the FWF) point to the responsibility of governments and national institutions in production countries and argue that it is their responsibility to see that producers acknowledge the labour laws, i.e., make and enforce national labour laws. Companies that support this vision see their own role merely in initiating a process that encourages or forces producers to respect national laws. According to this logic the buyers do not have a responsibility to set something like living wages, because it is seen as the role of the national governments to do so. Minimum wage approaches are thus excused by referring to the responsibility of governments to deal with this issue.

However, this view does not recognize that global competition makes it unlikely that producing countries increase the wages in such a way that, e.g., workers can decently live on the minimum wages because they also fear competition, as chapter 8.2 shows (→ CH 3.1.3 & 8.2). According to Young's (2006) theory this background condition would require from responsible lead firms to collectively engage, for instance, either by ensuring that higher wages are paid, or by engaging in lobby politics that would have the effect that the national minimum wages would be raised. An example of the latter engagement is the letter some brands wrote to the Prime Minister of Bangladesh (→ CH 7.2). Having said this, just referring to the fact that national governments must regulate this, does not correspond to Young's idea of shared responsibility.

### **Fashion system & consumer demands**

Many lead firms argue that the fashion market and consumers dictate the need for low prices and multiple seasons, and they only deliver to these demands. Suppliers then use the low prices paid by some buyers as an excuse to not be able to provide good working conditions.

However, NGOs criticize that lead firms do not question whether it is acceptable to generate consumer demands that produce injustice, for instance, by selling cheap clothes that make it almost impossible to implement fair working conditions. The CCC argues that a company does not have to sell cheap clothes, as *Lidl* does. If a company can only sell clothes by violating human rights, it should not blame the fashion system or the suppliers for creating injustices. The concept of shared responsibility suggests that companies consider whether their business model will produce injustices.

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<sup>131</sup> In 1997 Krugman e.g. wrote one commentary about cheap labour in SLATE: <http://www.slate.com/id/1918> (1.7.2010)

### **Good trust relationships with local actors necessary**

The trust relationships between various actors in the global production networks (particularly workers, local NGOs, factory managers, auditors, lead firms) that are often in conflict can prevent standards from being fully implemented (→ CH 8.1.3, 9.1, 9.3). A key problem particularly regarding the inclusion of stakeholders into regulation practices is: who trusts whom, and how do new relationships influence existing trust relationships. The diversity of local NGOs and trade unions is very high, and corporate actors often mistrust civil society actors, and vice versa. Whereas some NGOs are little trustworthy, others are more. The question is, how are these identified? Due to the variety of local NGOs, one necessary condition for gaining legitimacy through stakeholder participation is that not only the stakeholders that are included are made transparent, but also how they are included. However, the findings highlight a key problem that seems to be unsolvable, namely the fact that the producers often do not trust those stakeholders, whom the workers trust, and vice versa. Future research should therefore look deeper into the relationships between companies and civil society actors in the production countries, i.e.: How to identify local NGOs that represent the workers?

### **11.1.2 Power**

#### **Purchasing power disables implementation of standards**

From the results I suggest that there are at least four different understandings of the lead firms' power in the supply chain that are all connected to their responsibility for improving working standards (→ Table 21). NGOs argue that lead firms can exert all types of power listed in the table, and have to make use of all of them. The BSCI, FWF and CCC agree that responsible use of power includes that the companies demand and control social standards (→ Table 21 – 1,2). One difference between the BSCI and the FWF (and CCC) is that the FWF and the CCC demand that lead firms make use of their power to support producers with the implementation of standards, that they verify this and make the results transparent (→ Table 21 – 3,4). BSCI members might also do this, but they are not obliged to and it is not transparent what they do.

Furthermore, exerting power in the supply chain conflicts with the need of trust in the chain, and this leads to a situation where either the trust or power needed to implement standards is missing. Power is needed, it is argued, to be able to enforce social standards on the suppliers. However, a more balanced 'fair' trade relationship between buyers and their suppliers is rather based on trust than on power. But if lead firms trust that producers implement standards, consumers and NGOs fear that this does not happen.

**Table 21: What type of power do lead agents have in the context of responsibility for workers?**

1.	Power to demand from a producer to implement the standards
2.	Power to control/audit whether a producer implements standards
3.	Power to support the producer in implementing the social standards
4.	Power to freely select the producer who produces the goods. A responsible lead firm would only source from such suppliers, who either comply with the standards or signal their willingness to do so.

**The power of consultants, social auditors and management systems**

The findings suggest that many companies believe that they 'do good' because they rely on the technical information provided by auditors and consultants and on the technical methods applied. They take for granted (or at least argue that way) that audits provide reliable information about the working conditions inside the factories, and act accordingly. The claim by the BSCI and paid auditors that standards are implemented (→ CH 9.1) is trusted more than claims by the CCC or workers that this is not true (→ CH 6). Similarly, consultancies support the belief in the BSCI by recommending companies to join this initiative instead of considering multi-stakeholder approaches. However, what is finally important is how the consumers interpret the information provided by the BSCI and its members and by the CCC, and how they react upon the information. I suggest that a company would not become member in the BSCI if it did not have any advantages from it. The fact that the membership of the BSCI is rising more than that of the FWF indicates that consumers either believe that the BSCI is sufficient to increase the working conditions or that consumers do not signal their protest against this initiative sufficiently. This also points to the limitations of voluntary regulation.

Further research should look at the role of consultants: In how far they deliver an image of PSIs as an optimal solution and how they evaluate the critique by NGOs and trade unions. Research should also examine the power that consumers hold over companies: how do the demands of consumers influence the CSR policies of companies?

**Workers' lacking knowledge and power**

Most actors in GPN agree that workers in factories in developing countries lack the knowledge of their rights as workers, and many argue that workers are not empowered to complain about their workplace situation. The findings suggest that power relations inside factories discourage workers from telling the truth about the workplace situation or from claiming their rights. While the CCC regards it as useless to include workers inside factories, e.g., in audits, the BSCI system does not recognize this as problematic (→ CH 9.3). NGOs and the FWF claim that an environment must be created outside factories allowing workers to protest, whereas BSCI favours solutions inside factories (→ CH 9.3).

**11.1.3 Value****Poor management skills at the production factories**

Most lead firms and also stakeholders in the production countries argue that factory managers in the production factories do not have the skills to run a factory, and that this contributes to work-related problems (→ CH 10.2). The BSCI regards the main problem of poor working standards in the skills and thus focuses the solutions on this. The FWF argues that management skills need to be improved, but this is seen as one of many problems in supply chains that has to be solved.

**General beliefs about the costs of implementing social standards**

Many lead firms argue that their CSR is limited by the costs it incurs, what NGOs criticize (→ CH 11.1.1). However, to companies the costs of standard implementation define the limitations of voluntary CSR, and so lead firms and standards initiatives



develop several strategies to reduce these costs of taking responsibility (→ 7.3, 8.2, 9.4, 10.2). The efforts of the BSCI to reduce costs are more elaborated than those of the FWF.

I argue that many claims referring to costs of standard implementation are based on beliefs and speculations. Hardly any company could tell, what it really costs to implement, for instance, a living wage. Many also do not know whether consumers would really buy from another brand if prices increased. They fear that higher costs might frighten away actual and/or potential buyers and therefore they neglect responsibility issues. In addition, whereas it is quite common to argue that improving environmental issues can be cost-neutral, only few think that the implementation of social standards might save costs.

However, the fact that FWF members, in contrast, accept most claims of NGOs that other companies deem as ‘utopian’ (e.g. living wages) underlines two possible explanations: (a) Some companies do not fully understand the costs of CSR. (b) Individual companies for some reasons interpret very differently what CSR costs and what they are prepared to pay. The reasons for this are found inside lead firms and in the way they govern their supply chains. Findings suggest that ownership of the company plays a role, but also external influences and other factors. In the future, more empirical research should thus focus on why individual companies take certain decisions.

## **11.2 Legitimizing voluntary regulation: What CSR practices are seen as ‘good’?**

I argue that the different interpretations of the causes of labour rights violations lead to different CSR practices that are seen as necessary to improve working conditions. Table 22 sums up how the rules the BSCI and the FWF use to implement standards differ (→ CH 7).

The findings also show that actors in global production networks use different strategies to legitimize the credibility, legitimacy and effectiveness of their CSR practices. I suggest that the strategies mainly differ with regard to stakeholder inclusion (→ CH 11.2.1), transparency and accountability (→ CH 11.2.2), worker empowerment (→ CH 11.2.3), and the purchasing practices (→ CH 11.2.4).

### **11.2.1 Stakeholder inclusion: Who and how to participate?**

Most actors argue that stakeholders have to be included to make the regulation of social standards credible and legitimate. BSCI and FWF both argue that their approach is credible and legitimate, particularly because they include many stakeholders. But, the quality and scope of stakeholder inclusion varies between the two approaches and also between individual companies within either the BSCI or the FWF (→ CH 7, 8.1, 9.3, 10.3). Major differences occur regarding the question, what kind of stakeholder inclusion creates credibility or legitimacy (→ CH 3.1.4 & 3.3.2)?

Based on the theoretical literature discussed (→ CH 2.4, 3.1, 3.2, 3.3) I suggest that a more political concept of CSR must include stakeholders who (a) represent the intended

beneficiaries, i.e. the workers. Furthermore, stakeholders must be included in such a way that (b) their arguments are fully recognized in decisions, and that the final decision is taken on the basis of the better arguments. Because different people have different opinions on what the 'better' argument is, transparency is required regarding how a decision came about. Only this generates discursive/moral legitimacy.

However, even though all claim to generate legitimacy and credibility by the way they include stakeholders in the CSR practices, the differences in how they are included are large.

In **legislative regulation** stakeholders are fully included in the decisions the FWF takes on the rules of the system (→ CH 7.2, 8.1). Local NGOs criticize that only stakeholders from Europe, and not production countries, are represented, while the CCC thinks this is not necessary. The BSCI includes some stakeholders from Europe in a consulting function, which is criticized by the CCC for not being enough. In addition, the BSCI and the FWF consult stakeholders in the production countries; this participation is mainly meant to identify relevant issues, generate organizational learning, through projects etc. While this kind of inclusion of stakeholders might help solve problems, it does not generate a more democratic legitimacy. I suggest legislative regulation should be made more transparent and inclusive by applying transparent and discursive procedures, as developed by the *INSEAL Alliance*<sup>132</sup> that publishes rules related to codes of conduct and opens a web-based public consultation process.

**Judicial regulation** tries to identify labour rights violations inside factories that reflect the reality inside the factory. Audits have to be credible in order to generate consumers' trust in a lead firm. The problem is that there are different views on what audits and which auditors can be regarded as credible (→ CH 9). NGOs argue that workers and local civil society groups need to be included: this way they are empowered, they best represent the workers, and the workers can provide relevant information from inside the factories better than any auditor. However, they also have to be integrated in the 'right' way, e.g., workers should not be interviewed where managers can observe who is interviewed. The FWF tries to achieve this by interviewing workers outside a factory.

In order to generate discursive legitimacy and allow a better public discourse, the FWF could be even more transparent on the audit results, the supply chains, and the local partner groups it interacts with. Local NGOs criticize that they are not recognized enough, whereas others again criticize audit approaches that are too close to workers or to local NGOs, who are said not to help the workers, but mainly want to gain money, that they are not competent, or that too much trust in those would negatively effect the relationship to the managers (→ CH 9.2, 9.3). The BSCI claims it is not relevant to include local worker representatives or workers, because it takes for granted that auditing companies deliver the right information from inside the factory due to their quasi-scientific audit methods (→ 9.1, 9.2). Thus, the BSCI has a different understanding of how credible information can be gained and it is more interested in gaining information (even if the validity of this information is doubtful) than in the empowerment of workers.

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<sup>132</sup> [www.isealliance.org](http://www.isealliance.org)

### 11.2.2 Transparency & Accountability

I argue that due to the many different viewpoints on legitimate and credible CSR and the need to generate accountability, transparency plays a central role in making CSR regulation work. However, neither BSCI nor FWF disclose their members' supply factories, nor audit reports related to individual factories, both of which are demanded by the CCC.

While the BSCI publishes aggregated results of audits as 'our progress', the CCC regards it as a PR instrument trying to generate pragmatic legitimacy and tries to deconstruct this image, as the *Lidl* case illustrates (→ CH 7). Local NGOs from the FWF partner network criticize that they do not get information about which factories the FWF auditors visit. Also board members in the FWF are not allowed to look at concrete audit results that are regarded as secret business information by the FWF. In terms of accountability and a political approach to CSR this is problematic, as social audits are subjective interpretations of the situation in a factory and lacking transparency does not allow deliberation (→ CH 3.2.2). Without any possibility to verify audits, their credibility is low. Still, the FWF argues that being a multi-stakeholder initiative and applying the 'right' methods is sufficient for generating credible audit results. But the fact of being a multi-stakeholder initiative does not have anything to do with the credibility of the audits. Paradoxically, even though the CCC does not have access to the audit results, it recommends companies to become members in the FWF. Does the critique of local stakeholders remain unheard? The CCC regards the complete initiative as legitimate, because it includes worker representatives (e.g. the CCC) into the board and because the whole system has adapted to most of the demands by the CCC. However, the FWF only allows access to handpicked people. Basically the FWF and the CCC decide, who is legitimate, but they do not explain why certain actors are seen as legitimate and others not. While the FWF argues that more transparency would frighten away new member companies, based on the concepts of shared responsibility and political CSR, I claim that more transparency is necessary to allow external actors to participate better in the system and not run the danger of being called paternalistic by actors in the South (→ CH 3.2 & 3.3). Transparency also enables more inclusiveness. However, a barrier to achieving a more political concept of CSR is that companies are unlikely to adapt this level of transparency voluntarily.

### 11.2.3 Empowering workers

Furthermore, there are different views on (1) the role of workers' empowerment in improving the working conditions inside a factory and (2) how this shall best be done (→ CH 10.3).

First, while NGOs regard the empowerment of workers as the most important issue to improve the situation of workers, others turn down the idea of empowering workers, arguing that it does not function, for reasons that are presented in chapter 10.3.

Second, there is disagreement about the way workers should be empowered. NGOs argue that the aim should be to create an 'enabling' environment that allows workers to criticize their situation without fearing they will lose their job, i.e., by acknowledging

power relationships inside factories. Three main strategies are suggested:

- **Trade unions:** While the CCC and most other civil society actors regard it as essential that workers organize in trade unions, trade unions are criticized a lot by companies and also by NGOs (→ CH 10.3.1). They are said to not represent the workers, be difficult to work with, be negative for the job situation of the workers, and that they are not interested in the workers' well-being. Trade unions could certainly create an environment that allows for discussion. The findings, however, do not give a solution to the following dilemma: on the one hand, NGOs like the CCC demand cooperation with trade unions, yet on the other hand, hardly anyone interviewed has a good relationship with a trade union. I suggest that more research is needed on the relation between NGOs and trade unions.
- **Worker committees:** Particularly the BSCI regards worker committees as a solution for giving workers more voice to solve problems inside factories (→ CH 10.3.1). Many local NGOs, however, criticize these committees as problematic, because they are influenced by the power of the management and they do not allow the workers to speak freely. They see them as instrument used to pretend that workers have the right to discuss, while workers are not really free.
- **Complaints mechanisms** are seen as a possibility to empower workers (→ CH 10.3.2). However, it depends on how they are organized, on whether the workers feel free to use them, and that workers might not use them because they might fear losing their job, if they do. While many complaints mechanisms work via telephone numbers, local NGOs suggest that workers only use the mechanism, if they have trust in the people behind it.

Civil society actors argue that any such mechanism is based on trust and would need to be embedded in the local context and interact with local actors. This requires, they say, permanent and direct interaction on the local level. However, here again, it is questionable which groups to involve and how.

#### 11.2.4 Purchasing practices

There are different views regarding whether lead firms should adapt their purchasing policies, i.e., particularly the prices they pay, the lead times they allow and the flexibility in sourcing they allow (→ CH 10.1). While many (e.g. CCC, FWF) argue that lead agents' purchasing practices contribute to a situation where suppliers cannot recognize the workers' rights anymore, others (e.g. BSCI) rather argue that it is the suppliers' responsibility to stick to the rules of the governments and that the purchasing practices should be no reason why workers' rights are violated. And if a company cannot finish an order with the given practices within the laws, they should not accept this order. The later view corresponds to a belief that state regulation works (→ 3.1.3).

Accordingly, whereas the FWF intervenes into the members' purchasing policies, 'verifies' them and publishes results of their analysis, the BSCI does not check whether the purchasing practices allow standards to be implemented.

**Table 22: Different understandings of CSR in global production networks**

	BSCI	FWF
Legislative regulation	<ul style="list-style-type: none"> <li>Companies define the rules of the BSCI</li> <li>Suppliers and stakeholders in production countries are mainly responsible</li> <li>Members are responsible for their direct suppliers</li> <li>Stakeholders from production countries are consulted</li> <li>Minimum wages</li> </ul>	<ul style="list-style-type: none"> <li>Companies and worker representatives define the FWF</li> <li>Lead agent and suppliers share a responsibility</li> <li>Members are responsible for the whole garment chain</li> <li>Stakeholders from production countries are partly involved (country studies)</li> <li>Living wages</li> </ul>
Judicial regulation	<ul style="list-style-type: none"> <li>Members must integrate their direct suppliers into the BSCI audit system</li> <li>66% of suppliers audited in 3,5 years by SAAS accredited auditors</li> <li>Worker interviews only in factory</li> <li>Factories often pay audits</li> <li>Aggregated audit results are published</li> </ul>	<ul style="list-style-type: none"> <li>Members must audit their whole garment supply chain; the FWF conducts verification audits in factories <u>and</u> member offices</li> <li>90% of suppliers audited in 3 years by FWF trained auditors</li> <li>Worker interviews also outside factory</li> <li>Member pay audits, FWF pay verification</li> <li>Results of the management system audits of the member are published &amp; annual reports</li> </ul>
Executive regulation	<ul style="list-style-type: none"> <li>Purchasing policies not addressed</li> <li>Focus on management skills: Trainings offered, basic trainings paid by BSCI, more training paid by supplier or buyer</li> <li>Workers empowerment: Complaints mechanism via representatives in India &amp; China</li> </ul>	<ul style="list-style-type: none"> <li>Purchasing policies addressed &amp; progress reported</li> <li>Management skills: Member and producer have to find a solution; training paid by supplier or buyer; buyer together with producer must develop a strategy</li> <li>Worker empowerment: Complaints mechanism via local groups</li> </ul>

### 11.3 Limitations to the effectiveness of voluntary CSR

Membership figures of both initiatives show that many more companies have joined the BSCI than the FWF (→ CH 7.1). This confirms research indicating that scaling up impacts of more credible MSI is difficult (→ CH 3). Why do so many companies join the BSCI, even though the CCC and others strongly criticize it and recommend membership in an MSI? The empirical findings suggest several possible answers.

- Some companies are not interested in the differences between the two initiatives, but just require CSR for protecting the own reputation (→ CH 3.1.2).
- Some companies are not aware of or do not understand the differences in the approaches. I argue that this is partly connected to the public relations strategies conducted by initiatives like the BSCI that create an illusion regarding the quality of private regulation initiatives. While on the paper the approach is increasingly adapted to competing multi-stakeholder approaches like that of the FWF (the very recent introduction of the complaints mechanism is one example for this), the rules remain different in many small details that are said to make a difference in the impact.
- Membership in the BSCI is propagated by strong coalitions of politics and business: industry association, consultants, the EU Commission, the BMZ, the GTZ etc. The FWF, in contrast, is only supported and recommended by the CCC and some other

civil society groups. In the Netherlands and in Switzerland FWF representatives work on member acquisition, but German companies have not been targeted very much, and in Germany the support of the BSCI is very strong. This underlines that PSI are embedded and influenced strongly by a national institutional system (→ 3.1.3).

- Membership in the FWF is more expensive than membership in the BSCI, mainly because FWF members are obliged to take more responsibility for their supply chain (→ 7.1.2, 7.3, 9.4); companies that do not understand the differences between the two initiatives do not join the more expensive MSI.
- Some see the BSCI as an international approach – through its connection to the SAI; this is advantageous, as many suppliers know the approach; the FWF, in contrast, is seen as too much focused on Dutch companies.

Voluntary regulation and how it develops is very much dependent on the power of stakeholders. Ethical campaigning is one part of this pressure. The findings suggest that many more companies become member in an initiative like the BSCI that is criticized by the major ethical campaign, than in an MSI (which is recommended by the ethical campaign). This implies that the power of ethical campaigning is limited, and therefore many have been calling for mandatory regulation (→ CH 3.3). Even if scaling up of MSI is partly connected to ethical campaigning, it is questionable why companies reject rules that are mandatory for all at the same time. According to Zervas (2008) and others it can be helpful to make corporate responsibility practices obligatory for all at the same time as this could prevent actors from complaining of disadvantages in competition (→ CH 3.3). Future research could analyse, why companies oppose mandatory rules for all.

## **11.4 CSR in global production networks: Two theoretical approaches**

The BSCI, the FWF and their members all say they share a responsibility for improving working conditions in their supply chains. However, my analysis shows that the two approaches follow two different concepts of corporate responsibility. I suggest that the FWF adapts a ‘political’ concept of CSR based on ‘shared’ responsibility, whereas the BSCI adapts a ‘positivist’ concept of CSR based on ‘delegated’ responsibility (→ CH 2.4, 3.1.3). I argue that the two approaches are based on different ideas what causes injustices (→ CH 11.1), and thus apply different practices to act responsibly (→ CH 11.2), and are confronted with different limitations (→ CH 11.3). Here, I present what exactly lead firms are seen to be responsible for in each of the two initiatives (→ CH 11.4.1 & 11.4.2). Box 15 sums up some questions that can help to differentiate and assess CSR approaches that aim at implementing social standards.

### **11.4.1 Fair Wear Foundation: ‘Political’ CSR & shared responsibility**

The concept of ‘political’ CSR requires that companies become ‘politicized’, i.e., engage in public discourses about their practices. This way they shall gain organizational legitimacy (→ CH 3.1.4). This ‘political’ concept of CSR corresponds with concepts of

democratic legitimacy of private regulation that suggest (democratically) legitimate PSIs should be inclusive, transparent, accountable and engage in deliberative practices (→ CH 3.3). In my view, the FWF comes close to these theoretical ideals of corporate responsibility. The initiative tries to engage its members in a shared responsibility through a discourse between companies and worker representatives regarding the legislative regulation and in a discourse with local stakeholders in the production countries. Even though the inclusiveness and transparency of the FWF has a high quality, it also has some limitations (→ CH 8.1 & 9.1 & 9.3).

I have been arguing that the FWF approach to CSR/private regulation is more legitimate from a political perspective and generates legitimacy from public discourses, as compared to the approach of the BSCI. More legitimacy in this sense also generates more credibility. This confirms other studies that claim that multi-stakeholder initiatives are a more legitimate and credible approach to private regulation than business approaches (→ CH 3.2 & 3.3).

#### **11.4.2 Business Social Compliance Initiative: ‘Positivist’ CSR & delegated responsibility**

The concept of ‘positivist’ CSR regards companies as a-political actors. Liberal democrats believe that companies are not seen as subjected to immediate legitimacy demands, as long as they comply with moral and legal rules (i.e. laws), and thus they do not have to expose their decisions to public scrutiny (→ CH 3.1.4). According to this concept, the state establishes the rules, which the companies follow. I have been arguing that the BSCI follows this approach for gaining legitimacy. I suggest that the BSCI can be seen as delegating most of the responsibility to stakeholders in production countries (→ CH 7, 8.2, 9.4, 10.1.2), following the blame/liability model of responsibility (→ CH 2.4).

##### **Box 15: Assessing the legitimacy of supply chain CSR approaches**

I have argued that the mere fact that stakeholders are (somehow) involved in private regulation or CSR does not make voluntary regulation practices credible or legitimate. I suggest some questions that can be used to assess the credibility and legitimacy of private standards initiatives. This is just a very preliminary suggestion that has to be elaborated with the help of further research. The questions should refer to legislative, judicial, and executive regulation.

##### **Stakeholders inclusion/participation (quality / scope)**

- Do all stakeholders opposing the views of the companies participate in the rule setting?
- Do all participating stakeholders have the same voice?
- Are stakeholders from the ‘south’ included in such a way that they can influence the decisions?
- Is it ensured that the stakeholders represent the workers?

##### **Transparency**

- Are all participants in the CSR practices disclosed?
- Are all rules disclosed?
- Are all decisions disclosed?
- Are conflicting opinions on an issue / decision disclosed?
- Are the suppliers made transparent? Are the terms of trade made transparent?
- Are audit reports made transparent?

##### **Accountability**

- Are workers informed about their rights?
- Do the workers or other groups have a possibility to hand in complaints that they can use freely?

**Empowerment of workers**

- Are the workers empowered by people they trust?

**Power in supply chains**

- Is the power relationship in the supply chain recognized?

**Costs**

- Are costs of voluntary regulation shared between buyers and suppliers according to their financial abilities?

## 11.5 Limitations of the research

The empirical research has various limitations. First, it only analyses the *arguments* of different actors. Thus it mainly juxtaposes different arguments, but does not say anything about the truth of the statements. Second, it does not allow for assessing the effectiveness of any approach. However, it does present the arguments by different actors regarding the effectiveness of different approaches and compares them. Third, it was not possible to interview suppliers to the companies that I interviewed, because they were not disclosed; this would have allowed for a better reflection on the suppliers' problems in specific interactions. Fourth, it was not possible to access and assess any more detailed data on the supply chain relationships, because it is secret business data that few companies disclose to the public or to researchers.

I have already pointed out possible questions for future research. Here are some suggestions that could help dealing with the limitations of this research:

- Participatory research should *experience* the practices of setting rules and standards, auditing standards and implementing them in order to understand how the actual *practices* function. This could help identify power and trust relationships; however, there is always the danger that the presence of a researcher would strongly influence the research results.
- There is very little academic evidence that assess the effectiveness of a voluntary regulation approaches (→ CH 3.3.1). More input/democratic legitimacy in regulation might promote a higher effectiveness, but this has not been proven yet. Such research could help identify whether the costs for CSR and particularly audit costs are really worthwhile.
- Future research should collaborate more with companies, the standards initiatives, and the local worker representatives – either in individual projects or in projects that bring all actors together. Such research could help understand the specific interaction within a supply chain in more depth, as it would provide access to the supply chains. This allows gaining knowledge concerning, e.g., power relations in connection to CSR in the supply chain, the buyers' flexibility in raising prices or in the difficulties of implementing standards. Research in collaboration with local worker representatives could help to better understand how workers on the local level can be empowered, how to deal with the problems regarding conflicting trust in the production networks, and how these groups could be included in the CSR practices. Research in collaboration with companies and civil society actors might generate something like a 'discursive arena' that could help learning.



## 11.6 Corporate social responsibility: The Grand Illusion?

My research examines struggles about the legitimate and credible way to regulate business, and it questions whether the modern catch-word ‘CSR’ only creates a ‘grand illusion’, i.e., “the state or fact of being intellectually deceived or misled”<sup>133</sup>.

For instance, the *Lidl* lawsuit criticizes that the company deceives its customers by projecting the illusion that working standards in their supply chains are implemented by referring to BSCI membership. In contrast, the CCC has collected evidence showing that the working conditions in factories supplying to *Lidl* are poor. I have argued that, on the one hand, the BSCI does not deny that the working conditions are bad, on the other hand, it does a lot to show that their members are taking responsibility for improving working conditions in their supply chains. Due to little transparency of the system, it is very difficult to evaluate how much responsibility each single BSCI member takes. The BSCI therefore creates a level playing field for its members, which allows members to ‘free ride’ to a certain degree with the implementation of social standards and to delegate responsibility, which has been criticized by some fellow members. Thus, BSCI members can use the initiative to create an illusion and deceive customers, or they can try to use the tools to improve working standards.

Only ten days after the lawsuit was filed, *Lidl* and the *Verbraucherzentrale Hamburg* agreed that *Lidl* sign a declaration to cease and desist<sup>134</sup>. The company is no longer allowed to advertise by referring to its membership in the BSCI. The *Verbraucherzentrale* declared that this now makes it more difficult for firms to deceive the customers<sup>135</sup>.

*“This is a big victory for all consumers who care about how their clothes have been produced - but are being cheated by false advertising,” states CCC campaigner Sapi Ullrich. “We really hope that Lidl will not only stop advertising false claims but will also invest into actually improving working conditions throughout their supply chain.”*<sup>136</sup>

While the lawsuit has certainly not made the working standards in the *Lidl* supply chains any better, this research shows that the BSCI runs danger of being presented as ‘The Grand Illusion’ in the media, only trying to create pragmatic legitimacy, and maybe even possibly deceiving their customers. As a result of the lawsuit, all other BSCI members must fear that they might also be sued one day.

I suggest that the BSCI can counter that risk by adapting a much more inclusive, transparent and discursive approach to CSR. This approach would have to go beyond the inclusiveness and transparency of the FWF and fully engage with all stakeholders and discuss how the situation in the factories can be improved. But the empirical findings suggest that it is unlikely that companies voluntarily agree to take on such an approach. It is much more likely that companies will either stop advertising with a CSR label, or rephrase their definition of responsibility. While *Lidl* agreed not to advertise anymore that they promote fair working conditions, it has now rephrased its responsibility by arguing that they are aiming to achieve ‘sustainability’:

<sup>133</sup> <http://www.merriam-webster.com/dictionary/illusion>

<sup>134</sup> Unterlassungserklärung

<sup>135</sup> Welt online, 21.4.2010, 15:28: Unterlassungserklärung. Lidl gibt umstrittene Werbekampagne auf

<sup>136</sup> <http://www.cleanclothes.org/media-inquiries/press-releases/german-retailer-lidl-retracts-false-claims-of-fair-working-conditions>, 30.4.2010

*Als Unternehmen ist es grundsätzlich unser Bestreben, die sozialen und ökologischen Belange in Einklang zu bringen, um das in uns gesetzte Vertrauen zu rechtfertigen. 'Nachhaltigkeit' hat seit vielen Jahren für Lidl einen bedeutenden Stellenwert, welcher in unseren Engagements innerhalb und außerhalb unseres Kerngeschäfts sichtbar wird. Unsere vielfältigen Engagements im Bereich der Nachhaltigkeit werden dabei von Anfang an intensiv betreut, damit die Verantwortung da ankommt, wo sie gebraucht wird.<sup>137</sup>*

Replacing the aim to promote fair working conditions with the more general aim to “harmonize social and ecological issues” cannot be seen as progress in terms of political CSR or democratic legitimacy.

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<sup>137</sup> [http://www.lidl.de/cps/rde/xchg/SID-1AF94E85-FBCD6A32/lidl\\_de/hs.xsl/5705.htm](http://www.lidl.de/cps/rde/xchg/SID-1AF94E85-FBCD6A32/lidl_de/hs.xsl/5705.htm), 2.5.2010

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Zürich, den 10.10.2010

A handwritten signature in black ink, appearing to read 'M. Starmanns', followed by a long horizontal stroke.

Mark Starmanns